2036

SUPREME COURT OF THE UNITED STATES.

No. 189.

BENJAMIN T. REED, APPELLANT,

vs.

WILLIAM M. PECK, JACOB BADGER, JEREMIAH HUNT, JEREMIAH HUNT, Jr., BENJAMIN WOODSIDE, BENJAMIN MORSE, STEPHEN SNOW, HORATIO HALL, AND JOSEPH MELCHER.

APPEAL FROM THE CIRCUIT COURT, UNITED STATES, FOR THE DISTRICT OF MASSACHUSETTS.

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UNITED STATES OF AMERICA,
Massachusetts district.

October term, 1851.

At a circuit court of the United States, begun and holden at Boston, for the first circuit and district of Massachusetts, on Tuesday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty—

Before the honorable Levi Woodbury, associate justice, [and] honorable Peleg Sprague, district judge.

WILLIAM M. PECK, Jacob Badger, Jeremiah Hunt, Jeremiah Hunt, jr., Benjamin Woodside, Benjamin Morse, Stephen Snow, Horatio Hall, and Joseph Melcher, libellants and appellants,
vs.
BENJAMIN T. REED, respondent and appellee.

The transcript of the record of the district court in this cause was filed in the clerk's office on the fifteenth day of October, A. D. 1849, and is as follows, viz:

UNITED STATES OF AMERICA,
Massachusetts district, ss.

At a special district court of the United States, holden by adjournment at Boston, within and for the district of Massachusetts, on Friday, the fifteenth day of June, A. D. 1849.

Before the honorable Peleg Sprague, judge.

BENJAMIN T. REED, libellant,
vs.
WILLIAM M. PECK et als., respondents.

This libel was filed in court on the fourteenth day of February, A. D. 1846, and is as follows, viz:

To the honorable Peleg Sprague, judge of the district court of the United States, for the district of Massachusetts.

The libel and complaint of Benjamin T. Reed, of the city of Boston, merchant, owner of the ship called Concord, against William M. Peck and Jacob Badger, of the city of New York, and Jeremiah Hunt, Jeremiah Hunt, jr., Benjamin Woodside, Benjamin Morse, Stephen Snow, Horatio Hall, and Joseph Melcher, of Brunswick, in the State of Maine, merchants and owners of a certain barque or vessel called the Clarissa, in a cause of collision, civil and maritime. And thereupon the said libellant alleges and propounds as follows, to wit:

First. That on the seventeenth day of January, A. D. eighteen hundred and forty-four, the said ship Concord, whereof John Lord then was master, got under weigh from her anchorage in the river Mississippi, having on board a valuable cargo of merchandise, and bound for Boston aforesaid, and proceeded down said river in tow of a steamboat, with a pilot on board; that at forty-five minutes past eight o'clock, a. m., civil time, the steamboat, with the pilot on board, cast off, it being about the usual and proper place; that a few minutes afterwards said ship grounded, when all sail was made to drive her off, without success, the ship heeling over very much without moving.

Second. That at half-past nine o'clock, a. m., of the same day, within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of this honorable court, the said ship called the Concord, lying aground as aforesaid, the said barque called the Clarissa was seen coming down the river in tow of a steamboat, which cast off before approaching the Concord, and left said barque inside of the ship; when said barque made sail and steered directly towards said ship, sailing with great velocity under the influence of a strong wind and tide; that said barque was hailed from the ship, and informed that the latter was aground, with loud and audible voices, several times, and requested to keep clear of the said ship, and which said barque had time and opportunity to do, and might with great ease and safety have done, but which those on board thereof refused, or, at least, neglected to do; and that notwithstanding the said ship Concord was then lying fast aground, and could not possibly get out of the way of the said barque Clarissa, and that notwithstanding there was room sufficient for the said barque to pass, the crew thereof kept on their course, with the wind and tide, and ran the said barque, with great force and violence, foul of and on board of the said ship Concord, and thereby stove in her stern from the tafrail down to the main transom, breaking the plank and two middle counter timbers, and two quarter timbers, both main rails, deck plank, and quarter pieces, started the main transom from the wood ends and the stern post, broke the round house on deck, a part of the cabin, the steering wheel, stancheons, and tiller, boat davits, two swinging cranes, and bulwarks on the larboard side, sprung the spanker boom, and caused the loss of the stern boat and four oars, and midship port shutter, and other damage, and said barque then swung round and drifted from the ship.

Third. That, at the time the damage mentioned in the next preceding article happened, it was impossible for the said ship to get out of the way of the said barque, by reason that the former was fast aground; that there was room enough for the said barque to steer clear of and pass by the said ship, without doing any damage whatever; and that if the crew of the said barque had not refused or neglected to endeavor to keep clear of the said ship, as desired by the said Lord and others, as before mentioned, which it was their duty to do, which with ease and safety they might have done, the aforesaid damage would not have happened.

Fourth. That the said ship Concord, before and at the time of receiving the damage from the said barque as before mentioned, was a tight, strong, and staunch vessel; and that the libellant then was the legal owner thereof, and of her tackle, apparel, and furniture.

Fifth. That, soon after the damages mentioned in the second article of this libel happened, the said ship floated over the bar, and anchored in deep water, and hoisted a signal for a steam tow-boat; all hands being employed in clearing the wreck from the rudder, and nailing boards and tarpaulins over the stern to keep the water out, and moving the cargo forwards; and that said vessel was then towed back to the port of New Orleans, whence she had sailed, and the damages before mentioned were repaired by shipwrights and others, so far as the same could be without discharging her cargo, which was not deemed necessary by the surveyors at that time, with all possible despatch; and said vessel then proceeded to Boston, where, upon her arrival, further examinations and repairs rendered necessary by said collision were made; all of which, with the additional expenses of towage, pilotage, taking out and restoring part of the cargo, and damage thereto, wages, and provisions, port-wardens, surveyors, and notary's bills and other incidental expenses, commissions, rendered necessary by said collision, with the damage caused by the detention of the ship, amounted to the sum of thirty hundred dollars; and that, by reason of said ship Concord having been run foul of, or run down as aforesaid, the libellant has sustained damages to the amount of thirty-five hundred dollars.

Sixth. That the owners of said barque have been often requested to pay said sum to the libellant, but have refused so to do.

Seventh. That the said owners of said barque are not citizens of this State of Massachusetts, and are not within the same, or subject to the jurisdiction, or liable to the process, of this honorable court, but that they have deposited, in the possession and control of the Warren Insurance Company, a corporation established and doing business in said Boston, certain goods, effects, and credits which may be attached to compel them to appear before this honorable court and respond to its decrees.

Eighth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court; in verification whereof, if denied, this libellant craves leave to refer to the depositions and other proofs to be by him exhibited in this cause.

Wherefore your libellant prays that process in due form of law, according to the practice of this honorable court, may issue against the said William M. Peck, Jacob Badger, Jeremiah Hunt, Jeremiah Hunt, junior, Benjamin Woodside, Benjamin Morse, Stephen Snow, Horatio Hall, and Joseph Melcher, and that their bodies may be arrested, and that they may be required to answer all and singular the matters so articulately propounded, and that this honorable court would be pleased to pronounce for the damages aforesaid, and for such other relief as to law and justice may appertain, and to condemn the said Peck and others in costs; and that if they cannot be found within the jurisdiction

First. That on the seventeenth day of January, A. D. eighteen hundred and forty-four, the said ship Concord, whereof John Lord then was master, got under weigh from her anchorage in the river Mississippi, having on board a valuable cargo of merchandise, and bound for Boston aforesaid, and proceeded down said river in tow of a steamboat, with a pilot on board; that at forty-five minutes past eight o'clock, a. m., civil time, the steamboat, with the pilot on board, cast off, it being about the usual and proper place; that a few minutes afterwards said ship grounded, when all sail was made to drive her off, without success, the ship heeling over very much without moving.

Second. That at half-past nine o'clock, a. m., of the same day, within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of this honorable court, the said ship called the Concord, lying aground as aforesaid, the said barque called the Clarissa was seen coming down the river in tow of a steamboat, which cast off before approaching the Concord, and left said barque inside of the ship; when said barque made sail and steered directly towards said ship, sailing with great velocity under the influence of a strong wind and tide; that said barque was hailed from the ship, and informed that the latter was aground, with loud and audible voices, several times, and requested to keep clear of the said ship, and which said barque had time and opportunity to do, and might with great ease and safety have done, but which those on board thereof refused, or, at least, neglected to do; and that notwithstanding the said ship Concord was then lying fast aground, and could not possibly get out of the way of the said barque Clarissa, and that notwithstanding there was room sufficient for the said barque to pass, the crew thereof kept on their course, with the wind and tide, and ran the said barque, with great force and violence, foul of and on board of the said ship Concord, and thereby stove in her stern from the tafrail down to the main transom, breaking the plank and two middle counter timbers, and two quarter timbers, both main rails, deck plank, and quarter pieces, started the main transom from the wood ends and the stern post, broke the round house on deck, a part of the cabin, the steering wheel, stancheons, and tiller, boat davits, two swinging cranes, and bulwarks on the larboard side, sprung the spanker boom, and caused the loss of the stern boat and four oars, and midship port shutter, and other damage, and said barque then swung round and drifted from the ship.

Third. That, at the time the damage mentioned in the next preceding article happened, it was impossible for the said ship to get out of the way of the said barque, by reason that the former was fast aground; that there was room enough for the said barque to steer clear of and pass by the said ship, without doing any damage whatever; and that if the crew of the said barque had not refused or neglected to endeavor to keep clear of the said ship, as desired by the said Lord and others, as before mentioned, which it was their duty to do, which with ease and safety they might have done, the aforesaid damage would not have happened.

Fourth. That the said ship Concord, before and at the time of receiving the damage from the said barque as before mentioned, was a tight, strong, and staunch vessel; and that the libellant then was the legal owner thereof, and of her tackle, apparel, and furniture.

Fifth. That, soon after the damages mentioned in the second article of this libel happened, the said ship floated over the bar, and anchored in deep water, and hoisted a signal for a steam tow-boat; all hands being employed in clearing the wreck from the rudder, and nailing boards and tarpaulins over the stern to keep the water out, and moving the cargo forwards; and that said vessel was then towed back to the port of New Orleans, whence she had sailed, and the damages before mentioned were repaired by shipwrights and others, so far as the same could be without discharging her cargo, which was not deemed necessary by the surveyors at that time, with all possible despatch; and said vessel then proceeded to Boston, where, upon her arrival, further examinations and repairs rendered necessary by said collision were made; all of which, with the additional expenses of towage, pilotage, taking out and restoring part of the cargo, and damage thereto, wages, and provisions, port-wardens, surveyors, and notary's bills and other incidental expenses, commissions, rendered necessary by said collision, with the damage caused by the detention of the ship, amounted to the sum of thirty hundred dollars; and that, by reason of said ship Concord having been run foul of, or run down as aforesaid, the libellant has sustained damages to the amount of thirty-five hundred dollars.

Sixth. That the owners of said barque have been often requested to pay said sum to the libellant, but have refused so to do.

Seventh. That the said owners of said barque are not citizens of this State of Massachusetts, and are not within the same, or subject to the jurisdiction, or liable to the process, of this honorable court, but that they have deposited, in the possession and control of the Warren Insurance Company, a corporation established and doing business in said Boston, certain goods, effects, and credits which may be attached to compel them to appear before this honorable court and respond to its decrees.

Eighth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court; in verification whereof, if denied, this libellant craves leave to refer to the depositions and other proofs to be by him exhibited in this cause.

Wherefore your libellant prays that process in due form of law, according to the practice of this honorable court, may issue against the said William M. Peck, Jacob Badger, Jeremiah Hunt, Jeremiah Hunt, junior, Benjamin Woodside, Benjamin Morse, Stephen Snow, Horatio Hall, and Joseph Melcher, and that their bodies may be arrested, and that they may be required to answer all and singular the matters so articulately propounded, and that this honorable court would be pleased to pronounce for the damages aforesaid, and for such other relief as to law and justice may appertain, and to condemn the said Peck and others in costs; and that if they cannot be found within the jurisdiction

of this honorable court, that then, and in such case, your libellant may have a warrant, according to the practice of this honorable court, to attach their goods, effects, and credits in the possession of the said Warren Insurance Company, to compel them to appear and respond to the decrees of this honorable court.

B. T. REED,
F. C. LORING, *Proctor.*

Whereupon, by order of the judge, a warrant of arrest issued, commanding the marshal of said district to take the bodies of William M. Peck, Jacob Badger, Jeremiah Hunt, Jeremiah Hunt, junior, Benjamin Woodside, Benjamin Morse, Stephen Snow, Horatio Hall, and Joseph Melcher, the respondents, (if their bodies should be found in his precinct,) and them safely keep so that they should appear before the district court of the United States, to be holden at Boston within and for the Massachusetts district, on the sixth day of March, A. D. 1846, at ten o'clock, a. m., then and there to answer to said libel, and to hold the said respondents to bail in the sum of four thousand dollars, and if the said respondents could not be found, to attach their goods and chattels to the said amount of four thousand dollars, and if such property could not be found, to attach the credits and effects of the said respondents to the said amount in the hands of the Warren Insurance Company in said Boston, garnishees of the said respondents, and to give notice to the said respondents, and summon the said Warren Insurance Company, to appear at said court.

On which the marshal made return as follows, viz:

UNITED STATES OF AMERICA,
Massachusetts district, ss.

BOSTON, *February 18th*, 1846.

Pursuant hereunto, and not finding the within named owners of the bark Clarissa, or either, within my district, or their, or either of their, goods, effects, or merchandises, which could be come at to be attached, I have summoned the within named Warren Insurance Company, garnishee, to appear and answer at the within named court by giving in hand J. L. Dimmock, president of said insurance company, a true and attested copy of this precept. On the nineteenth day of February current, I gave notice to all persons concerned, and particularly the owners of the within mentioned bark, by *advertised* the *the* substance of this monition in the "Boston Post," one of the newspapers printed at Boston aforesaid, and by posting a copy of the same notice at the court-house in Boston aforesaid, fourteen days at least before the day within named for trial.

ISAAC O. BARNES, *Marshal.*

Stipulation for costs.

Then appeared Stephen Snow, Jeremiah Hunt, Benjamin Wood-

side, and Benjamin R. Morse, of Brunswick, in the district of Main, by their attorney Francis W. Upham, of Boston, and produced for surety John Tuttle, of Boston, and Artemas White, of Sumerville; and the said Snow, Hunt, Woodside, Morse, Tuttle, and White, submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors, and administrators, jointly and severally, in the sum of two hundred dollars, unto the said Reed, that the said Snow, Hunt, Woodside and Morse, shall pay all costs and expenses which shall be awarded against them in this suit, upon the final adjudication thereof, or by any interlocutory order.

On the second day of September A. D. 1846, the following answer was filed in the clerk's office, viz:

To the honorable Peleg Sprague, judge of the district court of the United States, within and for the district of Massachusetts.

And now Jeremiah Hunt, Benj. Woodside, Benj. Morse, Stephen Snow, Jeremiah Hunt, jr., Horatio Hall, and Joseph Melcher, of Brunswick, in the State of Maine; and William Peck and Jacob Badger, of the city of New York, intervening for their interest in the barque Clarissa, appear before this honorable court, and for answer to the libel and complaint of Benj. T. Reed, against the said barque, her tackle, apparel, and furniture, and all persons intervening for their interest therein, allege and articulately propound:

First. That the respondents are true and lawful owners of the barque Clarissa.

Second. The respondents admitting the matters in the fourth, sixth, and seventh articles of said libel are true, allege and propound that the matters in the other articles are in great part falsely alleged, and that the truth is as is hereinafter propounded.

Third. The Clarissa, in good order, well equipped, and manned, on the fourteenth day of January, 1844, got under weigh from the port of New Orleans, and proceeded down the Mississippi in tow of the steamboat Invincible, and arrived near the entrance of the river on the sixteenth, where she anchored and remained until the following day in consequence of bad weather. On Wednesday, the said sixteenth day of January, strong breezes blew from the northwest, and the weather was clear. At 10 a. m. of said Wednesday the steamer again came alongside. the barque weighed anchor, and the steamboat proceeded to convey the barque over the bar; at 11 a. m. the steamer and pilot left the barque, being supposed to be all clear of the bar, the pilot first giving orders to steer two points to leeward of a ship, (since known to be the Concord,) which was just ahead of the Clarissa; said Concord having all her sails set, and being outward bound. In obedience to the pilot the barque headed along so one or two minutes, and then swung to a point to the windward of the Concord. The wheel was immediately put hard up, and the foretopsail sheeted home. The barque Clarissa at this time had swung off, heading for the Concord, and remained so, with her wheel hard astarboard, until she struck the said ship Concord.

After the collision it was ascertained that the Concord had grounded a short time before, which completely deceived the pilot and the master of the Clarissa, who reckoned that the ship was proceeding on, as at the time appeared to be the case.

Not five minutes had elapsed from the time the pilot and the steam towboat left the barque Clarissa before said barque fell off, and was found to be dragging in the mud her helm; and owing to the force and rapidity of the currents of the Mississppi it was beyond the power of man to avoid the disaster. In striking the Concord the barque Clarissa carried away her jib-boom, bow sprit, head cutwater, both cat-heads, ripped up her forecastle deck, started her wood ends, and received other damage, so that the barque Clarissa leaked six or seven hundred strokes per hour, and for her preservation it was absolutely necessary for her to return to the port of New Orleans for repairs. The barque having anchored and secured her masts by putting long tackles on the head stays, set a signal for assistance, and shortly after the steamer Southerner came alongside and took her in tow some distance up the river; the barque having two feet water in the hold, and leaking very badly. On Friday morning following the surveyors of the port of New Orleans were called, who recommended that the barque be discharged, and docked for examination and repairs, which the master, Joseph Melcher, found it necessary to have done for the general benefit.

Fourth. That the pilot, master, and crew of the Clarissa used due care and skill in the management of the Clarissa.

Fifth. That the collision happened by reason of the grounding of the Concord as she was proceeding with sails set, by reason of currents of the Mississippi, for that there are under currents in that river of great violence and force, flowing in directions different from the upper current of the Mississippi, and not discernible from above, so that the oldest and wisest of those seamen who are most skilled in the navigation of that river are oft times thereby deceived and thrown into great peril and danger; and by reason of shoal waters, shifting sands, and strong currents and winds, so that the aforesaid vessels being situated as aforesaid, it was not in the skill or power of man to hinder that unfortunate collision, whereby the barque Clarissa was so greviously damaged, endangered, and compelled for the time to abandon her voyage.

Sixth. That the premises are true, and the respondents crave leave to refer to depositions and proofs to be by them exhibited in this cause.

Wherefore the respondents pray this honorable court would pronounce against the libellant, and condemn the libellant in costs, and otherwise right and justice to administer in the premises.

RANTOUL, WOODBURY & UPHAM,
Proctor.

In the case of Reed vs. Peck and als., it is agreed to waive the signature and oath of the respondents to the answer, and that the depositions of the masters of the vessels between which the collision occurred,

may be read without objection on the ground of interest in the result of the suit.

F. C. LORING, *for libellants.*
RANTOUL, WOODBURY & UPHAM,
For respondents.

On the twenty-eighth day of March, A. D. 1849, the following answer of the Warren Insurance Company was filed in the clerk's office, viz:

To the honorable Peleg Sprague, judge of the district court of the United States, for the district of Massachusetts.

The answer of the Warren Insurance Company, a corporation established and doing business in Boston, in the said district, to the libel and complaint of Benjamin T. Reed against William M. Peck and others, owners of the barque Clarissa, in a cause of collision, civil and maritime.

The said respondents, in reply to so much of the said libel and complaint as they are advised is material for them to answer, state and propound as follows:

1. That on the thirteenth day of November, A. D. 1844, a policy of insurance to the amount of five thousand dollars was effected with the respondents, upon the said barque Clarissa, by Jeremiah Hunt, for whom it concerns, payable to him, a copy of which policy is hereto annexed.

2. That a loss occurred under this policy, which, as made up by Mr. John S. Tyler, amounted to $1,113 58, and became due May 17, 1846.

3. That the said Jeremiah Hunt, at the time of the service of the said libel and complaint upon the respondents, was indebted to the respondents in two premium notes, one dated November 12, 1844, for $301, payable in fourteen months, and one dated November 12, 1845, for $376, payable in fourteen months; which said last note, at the date of the making up of the last loss, deducting interest, was equivalent to $360 96; and after deducting the amount of these two notes, there remained due upon the policy aforesaid the sum of $451 62, which the respondents are ready to pay as they shall be directed by this honorable court.

4. Wherefore the respondents submit themselves to the judgment of this honorable court in the premises, and pray that they may be allowed to retain a reasonable sum for their costs sustained in this behalf.

In witness whereof the respondents have caused this their answer to be subscribed by their president, John L. Dimmock.

JOHN L. DIMMOCK.

Sworn to before me,

GEO. S. HILLARD,
Commissioner.

BOSTON, *March* 27, 1849.

No. 6,097.

By the Warren Insurance Company this policy of insurance witnesseth: That the president and directors of the Warren Insurance Company, in the city of Boston, do by these presents cause Jeremiah Hunt, for whom it concerns payment to him to be insured, lost or not lost, five thousand dollars on one-half of the barque Clarissa, for one year from November twelfth, 1844, at noon, whereof is master for this present voyage, or whosoever else shall be master in the said vessel, or by whatsoever other name or names the said vessel or master thereof is or shall be named or called; beginning the adventure upon the said barque as aforesaid, and to continue during the voyage aforesaid, on the vessel until she shall be arrived and moored at anchor twenty-four hours in safety, and on the property until landed. And it shall be lawful for the said vessel, in her voyage, to proceed and sail, to touch and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accidents, without prejudice to this insurance. Touching the adventures and perils which the said insurance company are contented to bear and take upon them in this voyage, they are, of the seas, fire, enemies, pirates, assailing thieves, restraints and detainments of all kings, princes, or people of what nation or quality soever, barratry of the master, (unless the insured be owner of the vessel,) and of mariners, and all other losses and misfortunes which have or shall come to the damage of the said barque or any part thereof, to which insurers are liable by the rules and customs of insurance in Boston; provided that the insurers shall not be liable for any partial loss on hemp and flax, unless the loss amount to twenty per cent. on the whole aggregate value of such articles; nor for any partial loss on sugar, flax seed, bread, tobacco and rice, unless the loss amount to seven per cent. on the whole aggregate value of such articles; nor for any partial loss on salt, grain, fish, fruit, hides, skins, or other goods that are esteemed perishable in their own nature, unless it amount to seven per cent. on the whole aggregate value of such articles, and happen by stranding; nor for any partial loss on other goods, or on the vessel or freight, unless it amount to five per cent., exclusive in each case of all charges and expenses incurred for the purpose of ascertaining and proving the loss; but the owners of such goods shall recover on a general average. And in case of any loss or misfortune, it shall be lawful for the insured, his factors, servants, and assigns, to sue, labor, and travel for, in, and about the defence, safeguard, and recovery of the said barque or any part thereof, without prejudice to this insurance to the charges whereof the said insurance company will contribute, in proportion as the sum insured is to the whole sum at risk. And so the president and directors aforesaid are contented, and do hereby bind the capital stock and other common property of the said insurance company to the insured,

Sum ins. $5,000.

Bark valued at $10,000.

Premium included.

Valued at $

Premium included.

Premium $300.

Policy 1.

$301.

his executors, administrators, and assigns, for the true performance of the premises, confessing themselves paid the consideration due unto them for this insurance by the insured at and after the rate of six per cent., to add one per cent. if in the North sea, from October 1 to March 1. And it is hereby agreed that if the insured shall have made any other insurance upon the bark aforesaid, prior in date to this policy, then the said Insurance company shall be answerable only for so much as the amount of such prior insurance may be deficient towards fully covering the property at risk, whether for the whole voyage or from one port of lading or discharge to another; and the said Insurance company shall return the premium, or a rateable part thereof, upon so much of the sum by them insured, or for such part of the voyage as they shall be exonerated from by such prior insurance, provided that no return premium shall be made for any passage whereon the risk has once commenced. And in case of any insurance upon the said bark, whether it be for the whole or part of the voyage, subsequent in date to this policy, the said Insurance company shall nevertheless be answerable to the full extent of the sum by them herein insured, without right to claim contribution from such subsequent insurers; and shall accordingly be entitled to retain the premium by them received in the same manner as if no such subsequent insurance had been made. And in case of loss, such loss shall be paid in sixty days after proof and adjustment thereof, the amount of the premium note, if unpaid, and all sums due to the company, from the insured, when such loss becomes due, being first deducted, and all sums coming due being first paid or secured to the satisfaction of the said president and directors, they discounting interest for anticipating payment. It is also agreed, that in case of capture or detention, the insured shall not have the right to abandon therefor, until proof is exhibited of condemnation or of the continuance of the detention (by capture or other arrest) for at least ninety days; and that the insured shall not abandon in consequence of the port of destination being blockaded, but the vessel shall, in such case, have liberty to proceed to another port not blockaded, and there end the voyage, or wait a reasonable time for the blockade of the original port of destination to be raised; and that the acts of the insured or insurers in recovering, saving, and preserving the property insured, in case of disaster, shall not be considered a waiver or acceptance of an abandonment. It is also agreed, that the insurers shall not be answerable for any charge, damage, or loss, which may arise in consequence of seizure or detention for, or on account of, illicit or prohibited trade, or trade in articles contraband of war; but the judgment of a foreign consular, or colonial court, shall not be conclusive upon the parties, as to the fact of there having been articles contraband of war on board, or as to the fact of an attempt to trade in violation of the laws of nations. It is also agreed that this policy shall be void in case of its being assigned, transferred, or pledged without the previous consent in writing of the insurers. It is also agreed, that the insured shall not have the right to abandon the vessel for the amount of damage merely, unless the amount

which the insurers would be liable to pay under an adjustment, as of a partial loss, shall exceed half the amount insured; and in case of a total loss of the vessel with salvage, the amount allowed out of the salvage to the officers and crew for wages earned, or services rendered previously to the loss, shall be considered as so much of the salvage applied to the use of the ship-owners, even although the same should be allowed or paid under the name of salvage, and not as wages, and shall accordingly be deducted in adjusting the loss. It is further agreed, that if any dispute shall arise, relating to a loss on this policy, it shall be submitted to the judgment and determination of arbitrators mutually chosen, whose reward in writing shall be conclusive and binding on all parties. The company is not liable for wages or provisions, except in general average; and on fishing risks the company not liable for wages or provisions, nor for cables or anchors. If there be any lime on board on cargo, or on freight, fifty per cent. to be added to the premium for the passage.

In all cases of over insurance, ten per cent. of the returned premium to be retained, not exceeding half per cent. on the amount of short property.

The company is not liable for partial loss on sheet iron, iron wire, Brazier's rods, iron hoops, or tin plates.

In witness whereof the president of the said Warren Insurance Company hath hereunto subscribed his name, and caused the same to be countersigned by their secretary at their office in Boston, this thirteenth day of November, one thousand eight hundred and forty-four.

(Signed) JNO. L. DIMMOCK,
President.

(Signed) A. WHEELWRIGHT,
Secretary,

Copy.—Attest: HENRY CROCKER,
Secretary.

This libel was entered at a special district court, held on the fourteenth day of February, A. D. 1846, and thence was continued, from time to time, until this fifteenth day of June, A. D. 1849; and now, after a full hearing of the cause, upon the facts proved and arguments of counsel, and mature deliberation thereon had, the court doth order, adjudge, and decree, that the libellant recover the sum of three thousand and ninety-four dollars and sixty-nine cents, and costs of suit, taxed at one hundred and twelve dollars and sixty cents, against the said principal defendants; and that the said Warren Insurance Company, trustees as aforesaid, after deducting their costs, taxed at seventeen dollars, do pay the residue of the amount in their hands, viz., four hundred and thirty-four dollars and sixty-two cents, to the libellant, in part satisfaction of said sum of three thousand ninety-four dollars and sixty-nine cents.

And on the 27th day of June, A. D. 1849, the respondents claimed an appeal from the foregoing decree; which appeal was not allowed by

the said court, on the third day of July, A. D. 1849, because more than ten days had elapsed after the making of the decree, and execution had issued thereon before the appeal was claimed.

A true copy of record. Attest:

S. E. SPRAGUE, *Clerk.*

This cause was entered at the October term of this court, A. D. 1849, and, on the nineteenth day of said October, the following motion to dismiss said suit was filed, viz:

U. S. circuit court, October term, 1849. In admiralty.

WM. M. PECK and al., appel'ts and resp'ts,
vs.
BENJAMIN T. REED, libellant.

And now, the said Reed respectfully prays that this suit may be dismissed, because the appeal of the appellants was disallowed in the court below.

F. C. LORING,
Proctor for libellant.

Whereupon, said motion being heard and considered, it was ordered by the court that the same be overruled, and that the appeal be allowed.

The following letters and affidavits were read at the hearing of the above motion, viz:

BOSTON, *November* 2, 1849.

GENTLEMEN: From your communications, received on Tuesday last, I infer that you desire me to state what has been the rule of practice of the district court in the matter referred to. Ever since I have had occasion to inquire into the subject, I have understood the rule of practice to be to allow ten days, within which to enter an appeal in admiralty, and not more, unless for special cause shown. I have frequently, immediately after pronouncing judgment in a case, stated to counsel that ten days were allowed for entering an appeal; this has been sometimes done in answer to inquiries, and sometimes without inquiry. I have never known an appeal claimed after the expiration of ten days, except in the case of Reed vs. Peck, referred to in your note.

I am, very respectfully, yours,

PELEG SPRAGUE.

CHARLES S. WOODBURY, and
FRANCIS C. LORING, esqrs.

NOVEMBER 2.

GENTLEMEN: I have received your note, requesting me to state the rule which regulated appeals from the district court while I was clerk. I always understood the rule to be, that the party who claims an ap-

peal, must do it within ten days after the decree. If no appeal be claimed within ten days after the decree, upon application of the prevailing party execution would issue, as of course, according to the written rules in admiralty. During the time I held the office of clerk, I do not think an appeal was ever claimed after execution had issued, and I am sure an appeal was never entered in the circuit court, if it had not been first allowed by the district judge. As a matter of practice I always supposed that Sunday was included in the ten days.

Yours, very truly,

FRANCIS BASSETT.

C. G. F. C. & C. W. LORING, esqrs.

REED vs. PECK. } Admiralty.

United States district court.

I, Charles Levi Woodbury, on my oath do say, that I was informed of the decision of the case of Reed vs. Peck by seeing the same in the Atlas; and called at the clerk's office was informed it, the decree, was to be entered up that day, if I remember right. I wrote on the same day to my client's agent in Brunswick, Maine, informing him, and requesting instructions as to an appeal, and sent the letter to the post office. I further state, that I called on the counsel of the libellant, and gave him notice that I had written to my clients on the subject, and expected to hear from them, when I would announce my determination, and stated some of the points where I thought the report was erroneous. I further say, that, on the twenty-sixth instant, after the adjournment of the court, I received from my clients a letter, by mail, dated 23d June, in which they informed me they had decided to take an appeal, and also that the gentleman, A. C. Robbins, to whom I directed my letter, was absent from Brunswick. I also wrote them another letter of the 22d instant, and I do say that, in no respect, has there been any effort on my part to delay or obstruct the speedy prosecution of this cause. And I am further of opinion, that there are points of law involved in this case on the side of my clients, and that they have good and substantial reasons, on the merits of this cause, for prosecuting an appeal; and that I am informed and believe, that the appeal is not claimed for the purposes of delay or vexation, or to impair in any way the rights of the libellant or his security in any judgment which may finally be made.

CHAS. LEVI WOODBURY,
Proctor for respondents.

July 3d, 1849. Sworn to before me.

S. E. SPRAGUE, *Clerk.*

A true copy.
Attest:

S. E. SPRAGUE, *Clerk.*

The following copies of depositions were filed on the tenth day of December, A. D. 1849, viz:

United States of America. The district court of the United States, within and for the Massachusetts district.

[SEAL.] MASSACHUSETTS DISTRICT, *ss.*

To Leonard P. Merrill, esquire, of Brunswick, in the district of Maine.

Know ye, that resposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed, of Joseph Melcher, Thomas A. Melcher, and Daniel Dunham, all of said Brunswick; to be used in a certain cause now pending in said court, wherein Benjamin T. Reed is libellant, versus William M. Peck et al., respondents.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce, or cause the same to be reduced, to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the district court aforesaid, holden at Boston, as soon as the same shall have been executed.

In testimony whereof we have caused the seal of the said district court to be hereunto affixed.

Witness the honorable Peleg Sprague, at Boston, this eighteenth day of September, in the year of our Lord one thousand eight hundred and forty-six.

S. E. SPRAGUE, *Clerk.*

N. B. You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the depositions, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving the depositions in answer to the interrogatories annexed to this commission. And you shall take such depositions in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponents and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk to assist you in reducing the depositions to writing. And you shall put the several interrogatories and cross interrogatories to the deponents in their order, and take the answer of the deponent to each fully and clearly.

STATE OF MAINE.

By virtue of the within commission, I have caused the depositions of the within named Joseph Melcher and Daniel J. Dunham to be

taken in answer to the interrogatories and cross interrogatories hereunto annexed, and have annexed said depositions to the commission aforesaid, and herewith return the same to the court within mentioned. The deposition of Thomas A. Melcher within named, has not been obtained, he being when the commission was received, and now, at sea.

Fees.

Joseph Melcher 1 day's attendance	1 00
Daniel J. Dunham 1 day's attendance	1 00
Travel of same twelve miles	50
Expenses summoning witnesses	2 00
Service as commissioner	6 00
Postage	30
	$10 80

Dated at Brunswick, State of Maine, September 30, 1846.

LEONARD P. MERRILL,
Commissioner.

District court of the United States, for the district of Massachusetts.

Interrogatories to be exhibited to Joseph Melcher, Thomas A. Melcher, Daniel Dunham, of Brunswick, in the district of Maine, on behalf of the respondents, in the libel Reed vs. Peck et al.

1. Were you on board the barque Clarissa, on or about the fourteenth day of January, 1844; and if so, in what capacity?
2. What was the condition of said barque when she sailed from the port of New Orleans?
3. What day of the week and month did she get under weigh and proceed down the river?
4. Did she remain at anchor in the river; and if so, how long and for what cause?
5. On what day did she further proceed down the river?
6. With or without the aid of a steam tow-boat?
7. State what was the state of the weather of the wind on said latter day.
8. At what o'clock did the steam tow-boat come alongside?
9. Was there or not a pilot on board the barque?
10. At what time did the steam tow-boat cast off from the barque?
11. At what time did the pilot leave?
12. At that time what vessels were in sight?
13. Describe their position, distance, and appearance?
14. What orders did the pilot give on leaving; were those orders obeyed?
15. Describe particularly the course of the barque after the pilot left.
16. After the steamer cast off did the Clarissa obey her helm as usual; and if not, for what cause?
17. State all the circumstances within your knowledge of the collision of the Clarissa and the Concord.

18. How long after the steam tow-boat cast off before the collision?
19. How long after the pilot left?
20. When did you first observe that the Concord was aground; and if before the collision, state how long.
21. What efforts were made to avoid the collision, and why were they not successful?
22. After the danger of the collision was seen, could it have been avoided?
23. State what you know of currents and under currents in that part of the river.
24. State what was done on board the Clarissa immediately after the collision.
25. State particularly and fully what injury the Clarissa received.
26. State all that you know relative to repairs of the Clarissa in consequence of the collision.
27. State particularly what was paid for the repairs of the Clarissa and what was the loss by her detention, and the loss sustained by the owners in consequence of the collision.
28. State any other circumstances within your knowledge for the benefit of the defendants in this suit.

RANTOUL, WOODBURY & UPHAM, *Proctors.*

Cross interrogatories.

1. What *are* your age, place of residence, and occupation; if you were on board of the Clarissa at the time inquired of in the first interrogatory, please to state in what capacity.
2. Were you then, or are you now, an owner or a part owner of said vessel; if yea, of how large a part?
3. Were you then directly or indirectly interested in said vessel, or in her earnings or losses; if yea, please to state the nature and amount of such interest.
4. Are you directly or indirectly interested in the result of this suit; will it be of any consequence to you whether the owners of said barque prevail or are defeated therein?
5. What was the tonnage of said barque; what was her best sailing trim, and how many feet of water did she, when in good trim, draw forward and aft?
6. Was she a good sailing vessel, easily managed, obedient to her helm, or otherwise?
7. When she sailed from New Orleans in January, 1844, what cargo had she on board; of what did it consist; was she fully and deeply laden[ed] or otherwise; how many feet did she draw forward and aft?
8. At that time how many persons were on board thereof; please give their names and places of residence, and where they are to be found now; also to specify which were officers, before the mast, passengers, &c.?
9. Do you recollect distinctly and of yourself the circumstances at-

tending said vessel coming in collision with the ship Concord; have you had any conversation with any person or persons relative to the same, or received any information about it; if yea, with or from whom, and how lately?

10. Have you received any letters from any person or persons about such collision and the circumstances thereof, or respecting the testimony to be given by you in this suit? If yea, please to annex the same; if you cannot, give the reasons why, and state from whom they were received and the substance of the same.

11. How far were you from the Concord when she was first seen from the Clarissa, and in what direction; under what sail was each vessel at that time; which way was the wind; was it blowing fresh?

12. How far from the Concord was the Clarissa when the tow-boat and pilot left the latter, and in what direction; under what sail was the Clarissa then?

13. If the Clarissa had kept on the same course in which she was when the pilot left, would she have struck the Concord; how much was her course altered, and by whose orders, and for what purpose.

14. If you have said that the Clarissa did not mind her helm as well as usual, please to state how long this fact was discovered before she struck the Concord.

15. If you have said that she did not mind her helm as well as usual, and have undertaken to assign a cause for it, please to state whether you are certain that such was really the cause, or do you only suppose it to have been so?

16. If you have assigned a cause, please to state all the facts, circumstances, and reasons which lead you to believe that such was the true cause; when did it first occur or was first suggested to you?

17. If the fact that the Concord was aground had been earlier known or discovered, could not the collision have been avoided? If you say it could not, please to state all the reasons which induce you to think so.

18. How far from the Concord was the Clarissa when it was discovered that the Concord was aground; by whom was it first observed, and what was first done?

19. Was not the Clarissa then sailing under the influence of a favorable wind and tide, and with considerable speed; please to state at what rate she was sailing; was she a slow or fast vessel?

20. If you have said that the Clarissa fell off after the pilot left her, please to what cause this is to be attributed; was it not owing to some fault or negligence on the part of the person at the helm; might it not have been prevented or avoided?

21. When the pilot left the Clarissa, in what direction and how far off was the Concord; if the Clarissa had kept her course, would she have gone to windward or leeward of the Concord, or right on to her?

22. If the Clarissa soon afterwards swung round so as to point to windward of the Concord, please to state what was then done on board the Clarissa.

23. If the wheel of the Clarissa had then been put down, or if it

2045-

had been kept amidships, whether or not would she have struck the Concord; would she have not gone to windward of her? If you say no, please to give the reasons of your opinion.

24. If you know any other matter or thing which may benefit the the lib'ts in this suit, please state the same as fully as if thereto especially interrogated.

F. C. LORING, *Proctor.*

A true copy.
Attest:

Deposition of Joseph Melcher.

I, Joseph Melcher, of Freeport, State of Maine, of lawful age, in answer to the interrogatories and cross interrogatories submitted to me in the libel of Reed vs. Peck and al., doth depose and say as follows:

To the first interrogatory filed by respondents I answer, that I was on board the Clarissa on or about the fourteenth day of January, A. D. 1844, in the capacity of master.

To the 2d I answer, that said bark was perfectly sound in sails, rigging, and hull.

To the 3d I answer, that I do not recollect the day of the week she got under weigh and proceeded down the river, but know it was on the evening of the 14th of January, A. D. 1844.

To the 4th I answer, that she remained at anchor in the river from six o'clock the night of the sixteenth of January, A. D. 1844, till about nine o'clock the next morning; the cause of anchorage was thick weather.

To the 5th I answer, that she further proceeded down the river on the 17th of said January.

To the 6th I answer, that it was with the aid of a steam tow-boat.

To the 7th I answer, that on said latter day the weather was clear; in the forenoon a strong wind from the northwest, in the afternoon light and variable.

To the 8th I answer, that the steam tow-boat came alongside about nine o'clock in the morning of the 17th of said January.

To the 9th I answer, that there was a pilot on board the barque who came in the steam tow-boat.

To the 10th I answer that the steam tow-boat cast off from the barque at eleven o'clock and thirty minutes of the morning of the 17th of said January.

To the eleventh I answer, that the pilot left at the same time the tow-boat left.

To the 12th I answer, that the ship Concord, Swarrow, and some others whose names I did not know, were in sight at the time.

To the 13th I answer, that the ship Swarrow was about six miles in the offing; the Concord was a short distance ahead; the other vessels were astern, some at anchor and others getting under weigh.

To the 14th I answer, that the pilot told me to steer two points to

the leeward of the ship Concord, or south southwest, and those orders were obeyed.

JOSEPH MELCHER.

To the 15th I answer, she held the course instructed by the pilot about 2½ minutes, when she immediately swung to, to a point to windward of the ship.

To the 16th I answer, that she obeyed her helm, for 2½ minutes after the steamer cast off, as usual; after that she did not. I think the cause of her not obeying her helm must have been produced by her striking the mud, for I immediately threw the lead and found six inches less water than the barque drew.

To the 17th I answer, that the barque, after the tow boat cast off, held the course instructed by the pilot, about 2½ minutes, as I have before stated, when she swung to a point to windward of the ship. I immediately ordered the helm hard up; the reply of the helmsman was hard up. My first thought, upon the barque swinging to, was that it was owing to the neglect of the helmsman, but upon his reply I knew that could not be the case, and immediately threw the lead, and found, as I before stated, six inches less water than the barque drew. In the mean time she fell off, heading directly for the ship Concord, and not minding her helm, remained in that direction until she struck.

To the 18th I answer, that it was about five minutes after the towboat cast off that the collision took place.

To the 19th I answer, that it was the same time after the pilot left.

To the 20th I answer, that I did not observe that the Concord was aground until the Clarissa swung to and began to fall off again; it was near two minutes before the collision.

To the 21st I answer, that the wheel was kept hard up, and the head sails braced with the wind abeam, in the hopes that she would fall off enough to clear the ship; the reason they were not successful because the barque was dragging in the mud.

To the 22d I answer, that after the danger of the collision was seen it could not have been avoided.

To the 23d I answer, that there is a strong current in the middle of the river, with slight eddies on each side.

To the 24th I answer, that we immediately cleared away the anchors and fetched her to, and got preventer tackles on the head stays to prevent the foremast from going overboard, and tried the pumps, and saved what things we could.

To the 25th I answer, the flying gibboom, gibboom, and bowsprit were carried away, together with head-rails, head and cutwater; also catheads, one anchor stalk, forecastle deck, plank shearing, and starting the wood ends below the surface of the water; also chafing and cutting the bowsprit rigging; the bobstays were lost; the headsails were torn, and the windlass unshipped.

To the 26th I answer, that the Clarissa, in consequence of the collision, was towed back to New Orleans unloaded, taken into the dry-

dock, she was there recaulked, new breast hooks, new bowsprit, new gibboom, new catheads, new head-rails and cutwater, new head, new anchor stalk, new forecastle deck, new bowsprit rigging, were all made to her, and such other little repairs as were necessary.

JOSEPH MELCHER.

To the 27th I answer, that thirty-one hundred dollars was paid for repairs on the Clarissa in consequence of the collision. It was at least one thousand dollars loss, to the owners of the Clarissa, on account of her detention. Their loss, on account of the collision, was five hundred and twenty dollars.

To the 28th I answer, that a few days after the collision I saw the captain of the Concord in New Orleans; he never mentioned any such thing as damaged on account of the collision; attached no blame to me, but wished for both of us to go [to] the same notary to make our protest, so that there should be no difficulty in each of us getting our insurance; I told him I had made my protest and extended it, and had nothing more to do.

Cross examination.

To the first cross interrogatory, filed by the libellants, I answer, that I am thirty-eight years old; I reside in Freeport, State of Maine; am a sea captain, and was on board the Clarissa, at the time inquired of in the first interrogatory, in the capacity of master.

To the 2d I answer, that I owned one-eighth part of the Clarissa at the time of the collision, but do not own any now.

To the 3d I answer, that I was interested in her earnings and losses to the amount of one-eighth part of the barque.

To the 4th I answer, that I am interested in the result of this suit.

To the 5th I answer, that the tonnage of said barque was two hundred and twenty-four tons; she drew, in her best sailing trim, twelve feet aft, and eleven and one half feet forward.

To the 6th I answer, that she was a fair sailing vessel, easily managed, and uncommonly easy to steer.

To the 7th I answer, that when she sailed from New Orleans, in January, A. D. 1844, she had on board about one hundred and fifty barrels of heavy cargo, the rest light; the cargo consisted of oil, rosin, leather, clocks, pitchforks, &c., &c., &c. She was not fully laden; she drew, with this cargo, nine feet aft, and eight and one half feet forward.

JOSEPH MELCHER.

To the 8th cross interrogatory I answer, that there were ten persons on board, names as follow: Thomas A. Melcher, first mate; Daniel Dunham, second mate; James McFarlane, Peter Glasgow, seamen; rest unknown; there were no passengers; I don't know where they are now to be found.

To the 9th I answer, that I do recollect distinctly, and of myself,

the circumstances of the barque Clarissa coming in collision with the ship Concord. I have had some conversation with the owners in regard to the collision, but not within three months. I have received no information from any one in regard to the collision.

To the 10th I answer, that I have received no letters from any person or persons about such collision, and the circumstances thereof, or respecting the testimony to be given by me in this suit.

To the 11th I answer, that when the Concord was first seen from the Clarissa, she was five miles distant in a southwest direction; the Clarissa had no sails set; the Concord was making sail with a towboat alongside, crossing the bar; the wind was fresh from the northwest.

To the 12th I answer, that the Clarissa was about one and one-half miles from the Concord, when the towboat and pilot left the Clarissa in a northeast direction from the Concord. The jib and spanker were set when the towboat left, the topsails and topgallant sails were loosened ready to sheet home.

To the 13th I answer, that the Clarissa, if she had kept on the same course as when the pilot left, she would not have struck the Concord; her course was not altered after the pilot left, until she swung to of her own accord.

To the 14th I answer, that it was discovered that the Clarissa did not mind her helm as usual about three minutes before she struck the Concord.

To the 15th I answer, that I am certain the reason the Clarissa did not mind her helm, was because she dragged on the bottom.

To the 16th I answer, that I knew such to be the cause of her not minding the helm, from the fact of the helm being hard up, and she not minding it, and my immediately throwing the lead and finding six inches less water than she drew. It first occurred to me that such was the cause when I found the helm hard up, and she did not mind it.

To the 17th I answer, that if I had known that the Concord was aground when I was two miles off, a collision might have been avoided.

To the 18th I answer, that the Concord was about one hundred and twenty fathoms from the Clarissa when it was first discovered the Concord was aground. It was first observed by myself; the yards were immediately braced, and the wheel kept hard up.

JOSEPH MELCHER.

To the 19th cross interrogatory I answer, that the Clarissa was sailing at that time with a favorable wind, and in a very strong current, at the rate of about eight miles an hour; she was a fair vessel for sailing.

To the 20th I answer, I have not said she fell off until she swung to, and then the cause of her falling off was owing to keeping the helm hard up and bracing the sails. Her falling off was what I wished; and if she had fell off a point further, she would have cleared the ship.

To the 21st I answer, that when the pilot left the Clarissa, the

Concord was about one and one half miles off in a southwest direction. If she had kept her course, and not swung to, she would have gone to leeward of the Concord and cleared her.

To the 22d I answer, that when the Clarissa swung to a point to windward of the Concord, the helm was put hard up and sails braced.

To the 23d I answer, that if the wheel had been put down or kept amidships, the Clarissa would not have cleared the Concord to windward, for the reason that the current swept directly on to the Concord, and there was not wind sufficient to carry her to windward.

To the 24th, I answer, that I knew of no other matter that will benefit the libellants in this case.

JOSEPH MELCHER.

STATE OF MAINE.

On the 23d day of September, I caused the said Joseph Melcher to appear before [me,] who first being duly sworn, made answer as above to the interrogatories and cross interrogatories annexed to the commission directed to me, and issuing out of the United States district court for the district of Massachusetts. The interrogatories and cross interrogatories were put in their order, and the answers were reduced to writing by myself. The deposition was taken in a room separate and apart from all other persons, and no one was present during the examination of the deponent. After being reduced to writing, it was subscribed by the deponent, and sworn to before me on the day aforesaid. This deposition is to be used in a certain cause now pending in the court aforesaid, wherein Benjamin T. Reed is libellant vs. William M. Peck and al., respondents.

LEONARD P. MERRILL,
Commissioner.

Deposition of Daniel J. Dunham.

I, Daniel J. Dunham, of Brunswick, State of Maine, of lawful age, in answer to the interrogatories and cross interrogatories submitted to me in the libel of Reed vs. Peck and al., doth depose and say as follows:

To the first direct interrogatory filed by respondents I answer, that I was on board the barque Clarissa on or about the fourteenth day of January, A. D. 1844, and in the capacity of second mate.

To the 2d I answer, that the barque was in a good condition, every thing was sound and in good order. She was well fitted and well manned.

To the 3d I answer, that I do not recollect the exact day of the week and month we got under weigh and proceeded down the river, but know it was some time in January, 1844.

To the 4th I answer, that she remained at anchor in the river about fourteen hours on account of bad weather.

To the 5th I answer, that between nine and ten o'clock in the morning after we had been at anchor, we further proceeded down the river.

To the 6th I answer, that it was with the aid of a steam tow-boat.

To the 7th I answer, that it was clear weather, with the wind north-west.

To the 8th I answer, that the steam tow-boat came alongside about nine o'clock in the morning.

To the 9th I answer, that a pilot came aboard the barque at the time the steam tow-boat came.

To the 10th I answer, that the steam tow-boat cast off from the barque between ten and eleven o'clock of the same morning.

To the 11th I answer, that the pilot left at the same time the steam tow-boat left.

To the 12th I answer, that at that time I recollect of seeing only the ship Concord and one other vessel.

To the 13th I answer, that the ship Concord was directly ahead, about a third of a mile distant, under all sail, and apparently clear of the bar. The other vessel was ahead about six miles, and under full sail.

To the 14th I answer, that the pilot, on leaving, gave orders to make sail and steer two points to the leeward of the ship Concord; those orders were obeyed.

To the 15th I answer, that the barque held the course directed by the pilot about three minutes, when she swung to to a point to windward of the ship; she then fell off a point heading directly for the ship, which course she held until she struck.

DANIEL J. DUNHAM.

To the 16th I answer, that she obeyed her helm for about three minutes after the tow-boat cast off; after that, she did not on account of her striking the mud.

To the 17th I answer, that the barque, as I before stated, held the course directed by the pilot for about three minutes after the tow-boat cast off; she then swung to to a point to windward of the ship; the helm was immediately put hard up, the head sails were braced for her to pay off, and gib hoisted; she fell off a point heading directly for the ship, and continued that course in spite of all we could do, till she struck the ship.

To the 18th I answer, that it was about five minutes after the tow-boat cast off from the Clarissa before the collision took place.

To the 19th I answer, that it was the same time after the pilot left.

To the 20th I answer, that it was not until after the Clarissa had swung to, and fallen off, heading directly for the ship, that it was discovered the ship was aground; it was about one minute before the collision.

To the 21st I answer, that, after the barque swung to, her helm was put hard up and head sails braced, in hopes she would fall off and clear

the ship; the reason these efforts were not successful, was because the barque was in the mud.

To the 22d I answer, that, after the danger of collision was seen, it could not have been avoided.

To the 23d I answer, that, in that part of the river, there is a strong current running out.

To the 24th I answer, that we swung clear of the ship and immediately dropped our anchors; we then put tackles on our head stays to save our foremast; we also tried our pumps, and found the barque was making a great deal of water; we then set our colors for assistance.

To the 25th I answer, that the gib-boom, bowsprit, both cat-heads, head, and cutwater were carried away; the forecastle deck was ripped up, and the wood ends were started.

To the 26th I answer, that a new bowsprit, new jib-boom, new cat-heads, new head, new cutwater, new forecastle deck were made on account of the collision; her bottom was recaulked and painted.

To the 27th I am unable to make any answer.

To the 28th I answer, that I knew of no circumstances other than I have stated.

DANIEL J. DUNHAM.

Cross interrogatories.

To the 1st cross interrogatory filed by libellant I answer, that I am twenty-three years of age; reside in Brunswick, State of Maine; occupation, seaman; I was on board the barque Clarissa, at the time inquired of in the first interrogatory, in the capacity of second mate.

To the 2d I answer, that I was not then, nor am I now, an owner or part owner in the barque Clarissa.

To the 3d I answer, that I was not then, directly or indirectly, interested in said vessel or in her earnings.

To the 4th I answer, that I am not, directly or indirectly, interested in the result of this suit, nor is it of any interest to me whether the owners prevail in this suit or are defeated.

To the 5th I answer, that the tonnage of the barque was about two hundred and twenty-five tons; I do not know what her best sailing trim was; neither do I know how much water she drew when in her best sailing trim.

To the 6th I answer, that the barque was a fair sailing vessel, easily managed and obedient to her helm.

To the 7th I answer, that when she sailed from New Orleans, in January, 1844, she was loaded principally with heavy articles; it consisted principally of beef, pork, and corn; she was fully but not deeply laden; I don't know how many feet she drew forward and aft.

To the 8th I answer, that, at that time, there were ten persons on board; names as follows: Joseph Melcher, of Freeport, master; Thomas A. Melcher, of Brunswick, 1st mate; myself, 2d mate; names of the others were unknown; there were six men before the mast, one steward,

no passengers; Joseph Melcher is now in Freeport; Thomas A. Melcher is at sea; I know not where the others are.

To the 9th I answer, that I do recollect distinctly and of myself the circumstances of said vessels coming in collision; I have had no conversation with any one relative to the same, or received any information in regard to the same.

To the 10th I answer, that I have not received any letters from any one about such collision, or the circumstances thereof, or respecting the testimony to be given by me in this suit.

To the 11th I answer, that the Clarissa was about two miles from the Concord when she was first seen, in about a northeast direction from the Concord; the Clarissa at that time was under no sail; I don't recollect what sail the Concord was under; the wind was northwest, blowing fresh.

DANIEL J. DUNHAM.

To the 12th cross interrogatory I answer, that when the tow-boat left the Clarissa she was about one-third of a mile from the Concord in a northeast direction; at that time the foretopsail and gib were set.

To the 13th I answer, that if she had kept on the same course in which she was when the pilot left, she would not have struck the Concord; her course was not altered until she swung to of her own accord.

To the 14th I answer, that it was discovered that she did not mind her helm as well as usual about two minutes before she struck the Concord.

To the 15th I answer, that I am certain the reason the Clarissa did not mind her helm as well as usual was because she struck in the mud.

To the 16th I answer, that it must have been the true cause, because the helm was hard up; the head sails were braced, and there was sufficient wind to make her pay off, had she not been in the mud; the reason of her not paying off can be accounted for in no other way; it was suggested as soon as the sails were braced, and she did not mind her helm.

To the 17th I answer, that if the fact that the Concord was aground had been known early enough for us to have come to an anchor, the collision might have been avoided.

To the 18th I answer, that the Clarissa was about sixty fathoms from the Concord when it was discovered she was aground. I do not know who first observed it, but I think it was the captain; the helm was immediately put hard up, and head sails braced, in hopes she would fall off and clear the ship.

To the 19th I answer, that the Clarissa was sailing under the influence of a favorable wind and tide; I think at the rate of about seven miles an hour; she was a fair vessel for sailing.

To the 20th I answer, that she did not fall [off] until after she had swung to, then her falling off was caused by the helm being hard up, and sails braced, which was what we wanted, in hopes she would clear the ship.

To the 21st I answer, that when the pilot left the Clarissa, the Concord was about a third of a mile distant, in a southwest direction; if

the Clarissa had kept her course, she would have gone to leaward of the ship.

To the 22nd I answer, that when the Clarissa swung to, to windward of the Concord, the helm was immediately put hard up, the head sails were set and braced.

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To the 23d cross interrogatory I answer, that if the helm had been put down, or if it had been kept amidships, I think the Clarissa would not have gone to windward of the Concord, for the reason that we were so near the Concord when it was discovered she was aground, and there being a very strong current setting directly on to the ship, and the wind being a little quartering.

To the 24th I answer, that I know of no matter or thing other than has been stated.

DANIEL J. DUNHAM.

STATE OF MAINE:

On the twenty-ninth day of September, A. D. 1846, I caused the said Daniel J. Dunham to appear before me, who, first being sworn, made answer as above to the interrogatories and cross interrogatories annexed to the commission directed to me, and issuing out of the United States district court for the district of Massachusetts. The interrogatories and cross interrogatories were put in their order, and the answers were reduced to writing by myself. The deposition was taken in a room separate and apart from all other persons, and no one was present during the examination of the deponent; after being reduced to writing, it was subscribed by the deponent, and sworn to before me, on the day aforesaid. This deposition is to be used in a certain cause now pending in the court aforesaid, wherein Benjamin T. Reed is libellant versus William M. Peck and als. are respondents.

LEONARD P. MERRILL,
Commissioner.

A true copy.
Attest: S. E. SPRAGUE, *Clerk.*

I, John Lord, of Ipswich, in the Commonwealth of Massachusetts, of lawful age to testify on oath, depose and say, in answer to interrogatories to me addressed by F. C. Loring, counsel for the libellants.

1. Were you master of the ship Concord on her passage from New Orleans for Boston in January, 1848; if yea, at what time of the day did you sail, and at what time did the steamboat leave you; whether or not were you then aground?

Answer. I was master of the Concord on the passage referred to; we started for Boston on the morning of the 17th, at 4 o'clock, a. m;

the steamboat left us between half past and three-quarters past eight *eight* o'clock, and at the moment the boat left us we were not aground, but I told them of it before they were out of hearing.

2. How much water did the Concord draw at that time?

Answer. Fifteen feet and two or three inches.

3. Whether or not did you ground immediately on the tow boat leaving and remain fast?

Answer. We did.

4. How broad is the river in the place where she grounded, and how much room was there on both sides?

Answer. We were out of the river, over the bar, and at sea; there was no shore either side, except little reefs, &c., and we were outside of them.

5. Was there or not anything to prevent a vessel from going either side of you?

Answer. I should think not; at the entrance of the Balize hummocks are formed by the tide, which are sometimes out of water and then disappear, and on one those our ship stopped.

6. Which way was the wind, and was it fresh and strong, or otherwise?

Answer. The wind was from the westward and very strong.

7. What did you do, if anything, to get your vessel off?

Answer. We made all sail to force her over, but she didn't go.

8. Whether or not is there any crook or turn in the river, or anything to prevent a vessel, where the Concord was when aground, from being seen for several miles up the river?

Answer. Nothing.

9. Where were you when the Clarissa struck you; did you or not see her before she struck?

Answer. I was in the cabin when she struck us; I saw her coming down with a steamboat ahead of her before I went below; she had no sail I think.

10. When you came on deck where was the Clarissa, and what did she do?

Answer. When I got on deck she was ten or fifteen feet directly astern of my ship, in the act of swinging round.

11. What damage did the Concord suffer from the collision, and what expenses were incurred at New Orleans and elsewhere for repairs? If you have the bills, produce them.

Answer. The Concord was cut down from the taffrail to the transom on the larboard side of the rudder; stern boat and round house deck plank ripped, &c.; the bills of expenses incurred and paid at New Orleans are produced to me, and marked A, E, G, L, and B, E, G, L; those bills were paid by my order.

12. In how deep water were you before you struck?

Ans. Perhaps five minutes before she struck, the pilot of the steamer about to leave us said, you are all clear now, and in five fathoms of water.

13. Did the Clarissa run into you again, or swing by and ahead of you?

Ans. She swung round and drifted ahead again without touching us on the starboard side.

14. How was the weather, clear and fair, or otherwise?

Ans. Clear and fair.

Cross interrogatories by R. Rantoul, esq., counsel for the respondents.

1. In what direction was the Clarissa from you when you first saw her; how far distant, and how heading?

Ans. Directly astern of us; heading to very much the same point we were, and that was to the southwest, if I recollect right; she was two or three miles off, I think, when I first saw her; heading as I have stated.

2. Was the wind northwest and about an eight knot breeze when the collision took place?

Ans. I think there may have been a little northing in the wind, but it was what I called a strong westerly wind; it was more than an eight knot breeze for the Concord.

3. Had you struck or touched before you grounded; if so, how often and how long?

Ans. We had touched or struck on the bar, at times, for three quarters of an hour before we grounded, perhaps more, and parted hawsers, and the management was left to the steamboat.

4. Could the Clarissa have gone to leeward of the Concord as well as to windward?

Ans. It is my opinion she could have gone either side; as far as the wind was concerned she could, for it was a fair wind.

5. If the Clarissa had headed as she did when you first saw her, would she not have gone to leeward of you?

Ans. At the distance I saw her, a point one way or the other could have carried her clear; she appeared to be heading directly down to us, and following us; she was in tow of the steamboat.

6. How much water did the Clarissa draw?

Ans. I can't say; after she got up to town she drew 12½ feet; but they had trimmed the cargo aft to get her leak forward out of water.

7. How much water had you under your when you first touched on the bar?

Ans. About fourteen feet, dragging through one or two feet of mud.

8. What was the bottom?

Ans. Soft mud.

9. How were the Clarissa's yards braced immediately before the collision; were they so as to facilitate her falling to the leeward?

Ans. I didn't see.

10. Is there a strong current in the middle of the river with eddies on each side at that place?

Ans. I should think the current was there three or four knots, and a

regular current at the time; it was hardly in the river, but out of it; some ways outside the light-house.

11. Did you meet the captain of the Clarissa a few days after the collision at New Orleans, and talk with him about the accident?

Ans. I frequently met him, as we were repairing very near together, and undoubtedly talked with him about *about* the accident; I remember no particular conversation.

12. Did you propose to him to go before the same notary and make protest so that both could get your insurance?

Ans. I should think not; I know I didn't; I had been to a notary before I saw him.

13. What sail had the Clarissa set when she struck you?

Ans. Topsails and courses; but the sheets of one of the topsails appeared not to have been hauled home, or to have been let go.

JOHN LORD.

U. S. DISTRICT OF MASSACHUSETTS.

This thirteenth day of April, (1848,) A. D. eighteen hundred and forty-eight, personally appeared before me the above named Lord, and having been sworn to speak the truth, the whole truth, and nothing but the truth, in relation to the cause for which his deposition was taken, was examined by the parties herein after named, on written interrogatories, which, with his answers thereto, written down by me in his presence, after being carefully read over to him by me, were by him subscribed in my presence as and for his deposition. Taken at the request of B. T. Reed, to be used in a libel pending between him and W. M. Peck and al. before the district court of the United States, for said district, holden at Boston therein; said deponent being bound on a voyage to sea is the cause of taking this deposition, and said adverse party attended.

EDW. G. LORING, *Com'r.*

Com. fee, $4.

A true copy.
Attest: S. E. SPRAGUE, *Clerk.*

I, Samuel M. Prince, of Falmouth, in the State of Maine, mariner, of lawful age to testify on oath, depose and say, in answer to questions by F. C. Loring, counsel for B. T. Reed, libellant

1. Were you on board the ship Concord, which sailed from New Orleans on or about the 16th Jan., 1844, for Boston, and in what capacity?

Ans. I was on board as second officer.

2. Whether or not said ship in coming out of the river grounded on the bar of the S. W. pass?

Ans. She did, sir.

3. How long did she remain aground; whether or not exertions were made to get her off; with what success?

Ans. Perhaps she remained aground, as near as I can judge, three quarters of an hour, or half an hour; exertions were made to get her off, and they succeeded; I don't recollect exactly the time she remained aground.

4. Whether or not, while she was aground, did a barque called the Clarissa come down the river; if yea, whether or not with steam. When did the tow-boat leave her; whether inside or outside of the Concord?

Answer. While the Concord was aground the Clarissa came down the river with steam, and the tow-boat left her inside of the Concord.

5. Whether or not did the Clarissa make sail after the tow-boat left her; if yea, in what direction did she steer with reference to the Concord?

Answer. The Clarissa made sail after the tow-boat left her, and steered right for the Concord, near enough to touch us.

6. Whether or not was the Clarissa hailed from the Concord; if yea, by whom; what was said?

Answer. The Clarissa was hailed. I told her the Concord was ashore.

7. Whether or not did the Clarissa alter her course after she was so hailed; whether or not was there room enough for her to pass on either side of the Concord; whether or not was there time enough to alter her course after she was hailed so as to clear the Concord?

Answer. The Clarissa did not alter her course after she was hailed. I don't know whether she could pass inside or not, because of shoals, and I know nothing about them; she could have passed to windward if she had had a mind; if she had understood what was said, there was time enough to alter her course so as to clear the Concord after she was hailed, I should think.

7½. Whether or not was the Clarissa hailed loudly and distinctly, or otherwise?

Answer. She was hailed loudly and distinctly, to the best of my knowledge.

8. Whether or not was there any thing on the state of the wind, or any cause, which rendered it difficult or impossible for the Clarissa to steer to windward of the Concord?

Answer. There was nothing in the wind to prevent; the tide was right with her running out, and to my knowledge there was no other cause rendering it difficult or impossible for the Clarissa to steer to windward [of] the Concord.

9. How long had the Concord been aground before the Clarissa struck her?

Answer. I should judge not more than 20 minutes, as near as I can judge.

10. Whereabouts did the Clarissa strike the Concord; what damage if any did she cause?

Answer. The Clarissa struck the Concord about two *foot* or thereabouts from the stern post; she broke all the planks that run across the

stern; drove in the transom; stove up some of the deck planks; stove the jolly boat at the stern all to pieces; the round house and wheel stancheons were broke; two planks were started from the bottom; and I don't recollect any thing else material; it stove all the afterworks connected with the transom to pieces in the cabin.

11. What was done to the Concord after the collision?

Answer. She was brought to an anchor, and tarpaulins and boards were nailed over the hole the Clarissa made into her, to keep the water out as much as possible; the cargo was taken out of the run and lower hold and shifted forward, to tip her by the head; a signal for a steamboat was hoisted directly the anchor was down and she came off, but couldn't take the Concord off till high tide; she promised to come then, and did, and carried us up to New Orleans to Algiers; the ship was repaired there; I don't know the particulars of expense; she then proceeded right on to Boston.

12. Whether or not was a protest made at New Orleans concerning the matter inquired of; whether or not did you sign and swear to the same; whether or not did you then know or believe, and do you know that the statements therein are true; whether or not is the paper exhibited a copy thereof?

Answer. I signed a protest at New Orleans; it was read to me and was correct; the copy is the same as I can recollect that was read; it is marked A E G L.

Cross interrogatories by Mr. Upham, counsel for Wm. M. Peck and others, respondents.

1. Did you come down the river with steam?

Answer. We did, sir.

2. State more fully the circumstances as to the grounding of the Concord.

Answer. Before the steamboat which towed us down had got out of hail the Concord brought up; the captain hailed the pilot who was on board the steamboat, and said we were aground; the pilot told us to crowd sail and force her over; we crowded sail but she wouldn't start; the Concord touched while the pilot was taking her over the bar, and parted the ship's hawser; then we took a hawser from the steamer; the pilot before he cast off said we were all clear, and gave the captain the course for a short time.

3. What were you doing immediately after the Concord struck, and how long afterwards before you hailed the Concord?

Answer. I was seeing that the anchors were got on to the bow when she struck, and I hailed the Concord; I should judge five or ten minutes after, as near as I can recollect.

SM. N. PRINCE,
U. S. A., district of Massachusetts.

On the twelfth day of June, A. D. eighteen hundred and forty-six,

personally appeared before me the above named Prince, and after being sworn to speak the truth, the whole truth, and nothing but the truth in relation to the cause for which his deposition was taken, was examined by the parties hereinafter named on written interrogatories, which with his answers thereto, written down by me in his presence, were by him subscribed in my presence, as and for his deposition, taken at the request of Benjamin T. Reed and als., to be used in an action now pending between him and William M. Peck and al., in the district court of the United States, for the district of Massachusetts, and said adverse party attended; said deponent being bound to sea, is the cause of taking this deposition.

EDW. G. LORING, *Com'r.*

Agreed to be kept off file and for the use of parties.
A true copy—attest: S. E. SPRAGUE,
Clerk.

United States of America, the circuit court of the United States, within and for the Massachusetts district.

MASSACHUSETTS DISTRICT, *ss.*

To George S. Hillard, Charles Sumner, Edward G. Loring, George T. Curtis, Charles L. Woodbury, and Benjamin F. Hallett, esqrs.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed of Samuel Quincy, Alden Gifford, Charles Pearson, witnesses to be examined on behalf of the libellants, and to be used in a certain cause now pending in said court, wherein William M. Peck and als., appellants and respondents, versus Benjamin T. Reed, libellant and appellee.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same so taken and subscribed to return, together with this commission, and your doings herein enclosed, sealed and directed to the circuit court aforesaid, now holden at Boston, as soon as the same shall have been executed.

In testimony whereof we have caused the seal of the said circuit court to be hereunto affixed. Witness the honorable Roger B. Taney at Boston, this tenth day of April, in the year of our Lord one thousand eight hundred and fifty.

ISAAC O. BARNES,
Clerk.

N. B. You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the depositions, either himself or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponents whilst giving their deposition in answer to the interrogatories annexed to this commission. And you shall take such depositions in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponents and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk to assist you in reducing the depositions to writing. And you shall put the several interrogatories and cross interrogatories to the deponents in their order, and take the answer of the deponents to each fully and clearly.

Depositions to be taken on paper corresponding in size with this commission.

U. S. CIRCUIT COURT,
Massachusetts district.

October term, 1849.

WM. M. PECK and als., appellants and respondents,
vs.
B. T. REED, libellant.

Interrogatories to be exhibited to Samuel Quincy, Alden Gifford, Charles Pearson, and such other witnesses as may be produced in behalf of the libellant.

1. Please to state your age, place of residence, and occupation; whether you have at any time followed the seas; and if so, in what capacity and for how long.

2. Whether or not is your experience in nautical matters and navigation such as to qualify you to form a judgment upon facts relating thereto when presented to you?

3. Whether or not have you often been called upon to testify in the courts of this district, and state as an expert upon such matters?

4. Have you not read or heard read the depositions of Joseph A. Melcher, Daniel J. Dunham, John Lord, and Prince, taken to be used in this case?

5. If you have, please to state whether or not there was any fault on the part of the ship Concord, and whether or not she was bound to hoist a signal of distress, or make any sign that she was aground?

6. Whether or not is a vessel coming up with another, stationary or sailing very slowly, bound to keep a look-out on the one ahead, so as to steer clear of her?

7. Whether or not in your opinion is it conceivable that the fact that the Concord was aground was not known on board the Clarissa in time to avoid the collision, it being assumed that the Concord was aground for an hour or more in broad day-light, with all sail set, in sight

of the Clarissa, which was coming towards her at the rate of from 8 to 12 knots an hour?

8. If this fact was not observed on board the Clarissa, what inference, if any, should you draw as to whether there was or was not a proper look-out kept on board of her?

9. Whether or not was there negligence in not observing this fact under the circumstances?

10. Whether or not does the fact that the pilot, when he left the Clarissa, gave directions to steer two points to leeward of the ship, indicate that he observed that she was aground?

11. Whether or not, upon the evidence, is it your opinion that the Clarissa was in the mud so as to [be] unmanageable?

12. If the course of the Clarissa had not been altered when she swung to windward of the ship, whether or not, in your judgment, would there have [been] a collision?

13. If it were right in the barque then to attempt to pass the ship to leeward, should her head sails have been braced or abeam. Please to state what would have been the effect of bracing them aback, as to paying her off and deadening her way.

14th. Whether or not the collision might have been avoided if the barque had anchored, and within how short a distance of the ship this might have been done?

15. Whether or not in your judgment, upon the evidence in the case, the collision was an inevitable accident, or might have been prevented by the exercise of proper care and diligence on the part of either, and which vessel?

16. Whether or not, in your judgment, may the collision be accounted on the supposition that the helmsman of the barque did not hear or obey the directions of the pilot to steer two points to leeward of the ship?

17. When the master of the barque ordered the helm hard up, and the helmsman replied "hard up," does the answer indicate conclusively that the helm was already hard up; or that the helmsman heard the order and acknowledged it, or what else?

18. How is the luffing of the barque to be accounted for under the circumstances?

19. If you have not already done so, please to state to what, in your judgment, the collision is to be attributed.

20. If you know any other matter or thing which may benefit the owner of the ship Concord in this suit, please to state the same as fully as if thereto especially interrogated.

F. C LORING,
Proctor for libellant.

Cross interrogatories propounded in behalf of respondent.

1st. Have you any interest, or do you hold any office, in or under any insurance company having, or having had, a risk on the Concord

or the Clarissa. How long since you have been engaged practically and actually in seamanship or navigation.

2d to the 4th direct. Give the time when you read, or heard read, the depositions spoken of in this direct; did you pay as much attention to the respondents' testimony as to the libellant's, and do you think you can state, at this moment of answering, the facts which the respondents have set out in relation to the accident and the preceding circumstances; if so, please recapitulate them in your own language.

3d to the 2d and 5th. Do you know, or are you acquainted with, the rules and customs observed at the mouth of the Mississippi river as to getting over the bars, and in passing vessels, and as to collisions; if yea, when were you last navigating into or out of said river?

4th to the 5th. State what you know as to the depth of the water on the outer side of the said bar; what are the directions of the currents there; what the velocity; are there any eddies or cross currents; and what is their power or velocity; is the water there [fresh] or salt; is there or not any tide; does or does not the tide, if any, cause currents contrary or interfering with currents from the river; what is the color of the water? Please state particularly as to each branch of this interrogatory; also is it or not more difficult to steer vessels in such circumstances; and also whether or not vessels in shoal water and tide-way are manageable with certainty and exactness, equal to when in still water and deep water; do you or not know the custom in going in and out of the Mississippi, and the law there as to making signals; or is your answer a supposition or estimate of your own mind?

5th to the 6th. Whether or not it is usual on ship board in the day time, with clear weather, not in harbor, to keep a look-out for ships ahead, or bars or hammocks in muddy water, other than the observation of the officer of the deck and the man at the wheel; if so, how often in your nautical experience have you seen it?

6th to the 7th. Please refresh your mind on the circumstances stated by the respondent's witnesses, and say if the Concord had been aground one hour or only 15 or 20 minutes?

7th to the 9th. Is it or not usual for a ship of light draught in going out of a place like the mouth of the Mississippi, after her pilot has left her, to follow any vessel of greater draught of water than herself which she may see ahead of her going the same course; would you consider it bad judgment to act so?

8th to the 10th. Does or does not the fact of the pilot leaving a ship give any indication of his opinion; if so, what?

9th to the 11th. If a barque with but little sail on, in a place where there are strong and contrary currents, with her keel touching or nearly touching the bottom, is liable to take sudden sheers, and whether is she apt under such circumstances to obey her helm with any promptness or certainty. If under such circumstances her keel is actually in the mud four or six inches, does that increase her obedience to her helm, or does it not?

10th to the 12th. Will you state if in your judgment and opinion

the motions of the Clarissa in swinging to windward three points and then falling off only one point indicated that she was obeying her helm or not; if you answer affirmatively, does not this indicate that she was obeying very badly?

11th to the 13th. State if from the testimony there was or was not time to brace aback the sails of the Clarissa after the danger was observed. State also if bracing up was not a manœuvre calculated to aid in paying off the barque's head, and in deadening her way.

12th to the 14th. If the barque had anchored when the water was less than her draught, would she not have sunk herself on her anchor? If the barque would have sheered so as to anchor safely, would not that same obedience to the helm have enabled her to have gone clear; how much scope would have been given; and how much time would it take to anchor thus?

13th to the 16th. Do you see any evidence of the helmsman of the barque of disobeying his officers given in the testimony; if so, what?

14th to the 17th. Does the answer of the helmsman, "hard up," show conclusively that the helm was not hard up when he answered? If the helm was hard up when the order was given him, would he not have answered "hard up?"

15th to the 19th. Please give the facts on which you rely for this opinion, and say why you do not consider the other facts testified to in the case and bearing on this point.

16th to the 20th. If you know any other matter or thing which may benefit the owners of the Clarissa in this suit, please to state same as fully as if thereto specially interrogated.

CHAS. LEVI WOODBURY,
Proctor for respondents.

A true copy. Attest:

ISAAC O. BARNES, *Clerk.*

I, Alden Gifford, of Boston, of lawful age to testify on oath, depose and say in answer to interrogatories to me addressed:

1. I am fifty-two years of age; I reside in Boston; and have been employed for the last ten years in taking care of and building ships, and by the insurance companies as an agent. I am now employed by the city in distributing water to ships. I followed the seas forty years, twenty-five as master of a ship, and the rest as officer and seaman from a boy up.

2. I think they ought to be, and I am often called as a witness and expert much oftener than I wish to be.

3. I have frequently.

4. Yes, sir. I have read them all.

5. I think from the depositions, and on the facts stated in them, that there was no fault on the part of the Concord, and I do not think she was bound to make any signal that she was aground; it is not usual.

6. Yes, sir. I should think so.

7. It is to me inconceivable on the facts stated that it was not known on board the Clarissa that the Concord was aground in full time to save the collision, for I think the Clarissa could have avoided the Concord with twenty minutes, or half that notice, that she was aground; it was only necessary to alter the course of the Clarissa very little.

8. I should infer there was not a proper look-out kept on board the Clarissa, if they did not see that the Concord was aground.

9. I should think there was.

10. I should think so, and that that direction was given to clear the Concord, she being certain to keep her place.

11. No, I don't think she was; a vessel is manageable or not according to her velocity in going, for the power of her helm is according to that, and if she is moving it makes no odds whether she is moving through mud or water, that is, if she goes as fast through the mud as through the water, she will steer as well in the mud as in the water, and if the Clarissa was going from eight to twelve miles an hour, she had headway enough to steer.

12. I think if the course of the Clarissa had not been altered, she would have gone clear of the Concord; when she swung to windward, she headed away from the ship, and to windward of her, and if the Clarissa's helm had been kept straight, I think she would have gone clear of the ship.

13. If the barque was going to leaward, her head sails should have been braced; to have braced her sails aback, would have deadened her way and paid her off both.

14. If the barque had anchored a hundred yards, or a cable's length from the Concord, the collision would have been avoided, that is, at a hundred yards distance; the anchor of the Clarissa could have been let go and brought her up, so as to avoid any collision.

15. I think it was not an inevitable accident, and might have been prevented by proper care and diligence on the part of the Clarissa.

16. It might be perhaps accounted for in that way, but that is a matter of opinion; I can think of no reason why the man at the helm shouldn't hear.

17. It indicates that the helmsman hears the order and obeys it; that is the only conclusion to be drawn from it.

18. I couldn't account for it at all under the circumstances stated; I don't see how a vessel could luff with the helm hard up, unless her stays were put in a position in which it does not appear that the barque's were.

19. My opinion is that the collision was caused by inattention or carelessness on the part of the barque or those in charge of her; the ship was stationary, and with the wind and headway which the barque had, she could have gone either side of the ship, to windward or leeward of her, by a slight change of her helm made a cable's length off from the ship, and not to see this and do it was, I think, carelessness or neglect.

20. I do not know that there is any thing I have not stated to state to this interrogatory; when a vessel has the headway the barque is said to have had, her helm has more power over her than any action of her sails, and would control her, and bracing the head sails back when the helm was up would tend to pay her off and make her feel helm quicker.

Answers to cross interrogatories.

1. I have no interest in any insurance company; I have been engaged more or less in seamanship or navigation up to this time since I was nine years old; I was at sea last on a passage from Charleston, S. C., last winter, and my attention has been always given to navigation exclusively, either in the construction, repairing, rigging, and sailing of ships.

2. About a year ago, as I think, the depositions of both parties were submitted to me and Captain Charles Pearson, and I read the depositions of both parties with equal attention and with great care in company with Captain Pearson; we made a written statement of our opinion on the facts on mature and a great deal of consideration, and we signed it; it is now in my hands, as well as the depositions referred to in the fourth direct interrogatory; and to that statement I have nothing to add, and nothing to alter, and I refer to it now as part of my answer to this cross interrogatory; it is marked A E G L, by the commissioner; it was made, as to the writing of it, by Captain Pearson, but in my presence, and on his and my mutual suggestion and agreements; its substance is as much mine as his, and its statement as to the facts is that on which I have answered; to recapitulate them now would be only to read the words from this written statement; I understand the Concord drawing 15 feet 3 inches of water was aground in 14 feet in the mud, her keel one or two feet in the mud; that the Clarissa drew 9 feet aft, 8½ feet forward; that she was astern of and had followed the Concord, and after the collision the Clarissa drifted away by the starboard side of the Concord, without touching the ground, and that it was said by the pilot that when he left the Clarissa she had 30 feet of water, and that he left but a few minutes before the collision; these facts we thought irreconcileable with the statements of the witnesses for the respondents, and better proved; and on these facts Captain Pearson and myself formed the judgment we signed as stated.

3. I think I am acquainted with the rules and customs referred to in 1833; I last commanded a ship into and out of the Mississippi river; and I had been there previously, probably six times, as an officer and master, and as part of my duty I attended to such matters then; since 1833 I have been twice in and twice out of that river as passenger; in 1833 I got aground there, and saw other vessels pass in; and at various times I have seen other vessels aground and passed them there.

4. On the outer side of the bar the water shoals rapidly; close in it is about five fathoms, and in the distance of half a mile it is ten fathoms,

just where the current runs the strongest it is deeper than elsewhere; the depth of the [water] on the bar, however, varies with the state of the river, and it has been generally found that when the river is low the water on the bar is deeper; the main current there runs in the direction of the river; there are eddies or counter currents on each side of the river, and very strong ones, and their velocity or power depends on the state of the river; when the river is high these cross currents are stronger, their medium velocity may be four miles an hour; the water is fresh; there is no regular tide of any consequence, but a southerly wind drives the water in and makes more water on the bar than when it is northward; I don't think the tide has any effect on the current of the river as to its velocity at the bar, nor does it make contrary currents there; the color is a muddy brown; I never knew there was any law or custom as to making signals peculiar to the Mississippi river, or differing from the custom in other rivers.

5. Generally, at sea, in clear weather and in the day time, it is not customary to have a special look-out stationed for the purpose ahead; but in going up the Mississippi river, or going where vessels are to be passed, it is usual to have an officer or capable person forward to look out for vessels, or obstructions, drift wood, &c.; I have used and seen used this precaution myself in my voyages in the Mississippi river when I commanded, and when I was a passenger, and the very last time I was in that river; and I have used it and seen it used in other similar and frequented places.

6. I should say from the direct statement of the respondents' witnesses as to time, the Concord was not aground more than 15 minutes to half an hour, but from the whole testimony I should say she had been aground more than an hour before the collision.

7. I consider it a common thing to do so, and not an act of bad judgment, being watchful, and especially in a place where a large vessel is likely to ground; in such cases I should be very cautious not to get too near, and could easily avoid it.

8. That the vessel is out of danger from the perils of the bottom in reference to her draught of water.

9. I should think the barque, under the circumstances stated, would not be liable to take a sudden sheer; her helm would control her; if the water was shallow, it would affect the vessel's velocity in some degree, and only so much affect her steering; and it would not, I think, prevent her from obeying her helm with promptness, because the effect of shallow or deep water is very little as to the vessel's steering or velocity; but if her keel was actually in the mud it certainly would not increase her obedience to her helm, but would decrease it in proportion as it decreased her velocity.

10. If she went to windward three points and then fell off one point, I should think she was obeying her helm, as that was changed, and tolerably well.

11. I should think there was time after the danger was observed to brace back the yards of the Clarissa; it could be done in a minute;

bracing up the head sails would tend to pay her off, but not much to deaden her way; to brace all her yards would have no effect to pay her off, as it would balance her; it would have very little effect in deadening her way.

12. Had the barque anchored, it is possible her anchor might have gone through her, but not probable where it was so soft; the anchor would have been pressed into the ground; I think if the barque had sheered enough to anchor safely she could have gone clear by the same means; thirty fathoms would have been scope enough to have brought her up; if the anchors were all ready, it would take from three to five minutes to anchor her.

13. No, I do not.

14. When an officer cries hard up, the man at the wheel on hearing it cries out in answer hard up, to show he heard the order, and at the same minute, does it as quickly as possible; that is what I infer was the state here; if the helm was hard up, I suppose the man would reply also, hard up.

15. I infer the helm was not hard up when the captain ordered it hard up, because the man at the wheel had not previously been ordered to put it hard up, and would not do it without an order; I do consider all the facts stated bearing on this point, and I take them altogether.

16. I know nothing.

ALDEN GIFFORD.

I, Samuel Quincy, of lawful age to testify, on oath depose and say, in answer to interrogatories annexed and to him addressed—

1. I am fifty-nine years of age; I reside in Boston, and am president of the Hope Insurance Company, and I am in business also as a merchant. I followed the seas for about twenty-five years, from 1806, and from a boy before the mast to a master of a vessel; I was a master from the year 1812 to the year 1831 or 1832.

2. Yes, sir, I think it is.

3. Yes, sir, many times.

4. Yes, sir, I looked those depositions over some time ago, in reference to a trial in the district court.

5. I think there was no fault on the part of the ship Concord, on the facts stated in the depositions, and I think the Concord was not bound to make any signal that she was aground, it being in the day time.

6. Certainly.

7. If the Clarissa kept any look-out, I can't conceive that she could not have seen the Concord was aground; under the circumstances, the officer in charge could have seen her, and it was his duty to do so, and it could have been seen undoubtedly in time to avoid the collision; three minutes, or from three to five minutes, would have been time enough to have seen the Concord, so as to sheer the Clarissa clear of her, and a very little sheer either way would have done it.

8. If the Clarissa did not see the Concord in time to clear her, I should infer there was not a proper look-out kept on board the Clarissa.

9. Yes, sir, it was negligence; for if the Clarissa had been on the look-out she must have seen it, by overhauling the Concord so fast.

10. I should incline to the opinion that the pilot did observe that the Concord was aground, because he could not suppose that one ship was going faster than the other; and if he did not see the Concord was aground, he would know she might alter her course too; and if the Concord was not aground, such a direction would be absurd.

11. I think she was not; she was under quick headway, and drew 8½ to 9 feet of water, and a vessel drawing 15 feet of water had just preceded her, and when she had come in collision with the Concord she swung by her, and to windward of her, clear of the ground.

12. No, there would have been no collision; I think if the Clarissa had kept her yard to windward she would have gone clear, and it was endeavoring to break her yard too late which caused the collision.

13. The head sails should have been braced if she wanted to go to leeward, so as to make her pay off quick; the wind was so far aft that I think bracing them back would have no effect, or very little, compared with bracing them up sharp in paying her off; it would not have deadened her way much.

14. I am not sufficiently acquainted with the anchoring ground to answer the question. I was never there, and don't know how the anchor would hold; in ordinary ground I should suppose it might have been done in three cables length, so as to avoid the collision.

15. I think it might have been prevented by proper and ordinary care on the part of the Clarissa; it was caused by her want of a proper look-out, I have no doubt of it.

16. If the Clarissa had kept two points to the leeward of the Concord she would have gone clear of her. I cannot answer the question more definitely; if the helmsman did not hear the order he should not have steered into the Concord, and the officer should have seen he did not; if the helmsman heard the order, he did not obey it.

17. When the order "hard up" is given, the answer of the helmsman is "hard up," and he would say this to show he heard the order and did it; if the helm was "hard up," he would give it a push home, and say hard up; he would make the same answer in either case.

18. The only way I can account for it is by carelessness on the part of the helmsman; his not altering his helm when she began to swing to and meeting her.

19. The collision was owing to want of attention on the part of the officer in charge of the Clarissa.

20. I know nothing more which occurs to me now.

Answers of said Quincy to the cross interrogatories.

1. I have no interest in any insurance company having had or having a risk on the Concord or Clarissa. I left off going to sea in 1831 or 1832. I have made passages to the West Indies and back, once each way, I think in 1835.

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2. I read the depositions a short time previous to the trial. I referred to those of the one side with as much attention as the other, and I did not at the time know for which party I was called upon. I cannot restate all the facts, but I think I can the material ones—that both vessels were going down the river; that the Concord got aground, and the Clarissa, drawing less water, with the wind fair, and going from six to eight miles an hour, run into her, and then passed her to windward clear of the ground, having been notified to steer a course which would have carried her clear of the Concord; that the time was broad day and clear weather, and that the reason given is that the Clarissa did not mind her helm because she was in the mud, and did not see the Concord was aground in time to clear her.

3. I never was there, and know nothing.

4. Vessels in cross currents, tide ways, &c., may be as manageable as in still water to one who knows the currents, &c.; in shoal water they are not so manageable as in deep water; as to the rest of the question I can't answer, I was never there.

5. It is customary to have a special look-out wherever any danger may be expected; not at open sea, in broad day. In a river where there are other vessels it is usual to have such special look-out; I always did it.

6. From my recollection of the statements of the respondents' witnesses, refreshed by looking at the depositions, I cannot say how long the Concord had been aground, and only how long before the collision they knew she was aground, and that, by their statements, is very short —when the Clarissa was sixty fathoms off.

7. I should think it very well to follow a ship of larger draft.

8. Yes; that she was clear of the bottom.

9. If a vessel is near the bottom, and in contrary currents, she can't steer quite so well as in deep and still water; I don't know that she is liable to sudden sheers on that account, but if she sheers she can't break them so quick; if her keel is in the mud 4 or 6 inches, it does not increase her obedience to her helm, but diminishes it just as much as it diminishes her headway.

10. It indicates to me that she was obeying her helm, and it does not indicate that it was badly.

11. There was time to brace the sails of the Clarissa aback, for it would take only a second or so; whether it would have much effect in going sixty fathoms, the distance fixed by the respondents' testimony, is another question, and I don't think it would have had enough; and I make this statement in reference to the time the respondents' testimony says the Clarissa saw the Concord was aground, and not as to the time the Clarissa ought to have observed; bracing up was calculated to pay the barque off, but not to deaden her way; but I think it was unnecessary; had the barque's helm have been changed when it ought to have been, that alone would have carried her clear of the Concord.

12. It would depend on the character of the bottom; if the bottom was soft mud, and the anchor would sink down, she would not; if the

bottom was hard, and she went on to her anchor, she would; clearly, if the barque would have sheered so as to anchor, she would have gone clear; she could, in ordinary anchorage, have brought up in twenty or thirty fathoms; the anchor could have been let go instantly, if ready.

13. No; I do not.

14. It would depend on the circumstances; if the helm had been before ordered, or shown to be hard up, I should think the answer "hard up" indicated it was hard up, for a sailor would be more likely to say "hard up," in such case, than "it is hard up;" but if the helm had not been ordered hard up before, or was not shown to be hard up, then to me the answer indicates the helmsman heard and understood the order; and, from the testimony, I infer in this case the helm was not "hard up" before the order was given.

15. The pilot had ordered the man to steer about two points to leeward of the ship; this, with the free wind, would keep the helm a little starboard from midships; I take all the testimony together, and come to that conclusion.

16. I know nothing.

SAMUEL QUINCY.

I, Charles Pearson, of Boston, of lawful age to testify on oath, depose and say, in answer to interrogatories to me addressed—

1. I am sixty years of age; I reside in Boston, and am marine inspector; I followed the seas for forty years and more as sailor, officer, and mate; I was master of a vessel thirty years.

2. I presume it is.

3. Yes, sir, often.

4. Yes, sir; I read those depositions at the time of the trial of the case; they were handed to me for the purpose.

5. I think there was no fault on the part of the Concord as to the collision between her and the Clarissa; the Concord was aground, and could not help herself, and there was no reason her captain should expect a vessel coming down would run into him; and I think the Concord was not bound to make a signal that she was aground; there was no necessity or occasion for doing so.

6. I can hardly conceive of a vessel's so running down towards another aground, without finding out and knowing, before she got on board of her, that she was aground; in the first place, the Clarissa would, by approaching the Concord so rapidly, see that she was aground, by lessening the distance so much faster than she would have done if the Concord had been going also; then it is common for vessels to ground in the mud there, and the circumstance would suggest the fact of the Concord being aground; I think, with a proper look-out on board the Clarissa, it must have been seen that the Concord was aground in time to avoid the collision; and, knowing the Concord was ashore an eighth of a mile from her, or less, would have been enough to avoid her.

8. I should say, then, there was not a proper look-out kept on board

the Clarissa, and no look-out at all, if she run an hour towards the ship, and finally run into her.

9. I should say there was negligence under the circumstances stated; in broad day the Clarissa ought, with a good look-out, to have known the Concord was aground when she got within two or three miles of her, certainly.

10. It appears to me from that direction, the pilot saw the Concord was ashore, if she had been sailing, such a direction to the Clarissa would have been unnecessary, it was telling him "don't you run into that ship," which he (the pilot) would'nt have done unless he saw she was aground.

11. No; after the Clarissa struck, she rebounded and fell down and dropped along side the ship; and the ship drew fourteen feet water; the Clarissa then free was clear of the ground and manageable by her helm, in my opinion.

12. No, sir; I think the Clarissa would have gone clear of the Concord, if they had assisted the barque when she swung her head to the opposite side they intended to go; it was shifting the helm that caused the collision; they attempted to get her back again, and there was not time.

13. To go to leeward the head sails should have been square, not braced. If he could have braced the head yards back, it would have assisted her off, and impeded her way.

14. If the barque had anchored, I think it would have avoided the collision; and I think the Clarissa might have been brought up in the length of her chain, but it is an expedient not to be resorted to, except in a case of necessity.

15. I think the collision was not an inevitable accident, but a careless piece of work, and that it might have been prevented by proper care and attention on the part of the Clarissa.

16. I believe when the pilot left the Clarissa, her head was in the proper direction, and altered its direction afterward; and whether the helmsman heard and obeyed the pilot or not, is no reason for the Clarissa's running into the Concord; the officer should have seen to it.

17. It indicates, I think, that he heard the order and acknowledged it, and not that the helm was hard up; it is not conclusive, however.

18. My opinion is, that when the steamer was alongside, she steered the Clarissa, and the man at the wheel of the Clarissa had little to do, when the Clarissa was left alone, that moment she needed a change in her rudder to keep her place, and the man at her wheel did not give it to her, and she luffed.

19. I attribute the collision, as I have said, to want of proper care and attention on the part of the Clarissa.

20. I am not aware of any thing more than I have said.

Answers of Charles Pearson to cross interrogatories.

1. I have no interest in, and hold no office in, any insurance com-

pany having or having had any risk on the Concord or Clarissa; my last voyage was in 1839; ten years ago I returned from the East Indies.

2. I read the depositions about a year ago, and those on one side with as much attention as those of the other. I made with Captain Gifford a report of an opinion upon them which I have read to-day, and it states the material facts of the case on either side. I remember the respondent's testimony said the Clarissa was following the Concord down the river with a fair wind and in clear day, that the Concord was aground, and the Clarissa did not observe it till two minutes about before the collision; that the Clarissa braced her yards and tried to go to leeward, and didn't obey her helm, because she was in the mud, and that the lead was thrown and less water than her draught found; the judgment or opinion of Captain Gifford and myself, referred to above, was formed on the evidence of both sides, and there being a discrepancy, we took that which appeared to us the best proved on the whole case. I had before seen the testimony of the Clarissa's part alone, and it had given me a different impression of the case from what the whole testimony did.

3. I was last in the river Mississippi in about the year 1832; I didn't then, and do not now know, of any set of rules applicable to passing the bars; since I was there, there has been a change in the mode of going in and out by steam; it was then rare; it is now almost universal; neither do I know of any peculiar rules there about passing vessels or collisions.

4. I know the banks are steep, and when you get into ten fathoms you are very near the mud banks on the outer side of the bar, the current after it crosses the bar splits, I think, and takes a direction each way along the coast, and it is very irregular; the current is rapid when the river is high; when the river is low in the winter season, the current is comparatively slow, and in the winter I should think the velocity two miles and a half an hour, and in the summer about four miles and a half at the mouth or bar. I have no doubt there are eddies and cross currents there, but I have never been troubled with them; it is long since I have been there, and my memory to all these things is not very precise. As to the tide I think there is not generally a current setting up at a flow of tide, but that there is a difference of water on the bar; I don't know that there is not a current setting up in the winter season; the water is discolored and muddy in appearance for several miles out, I think, and further out in the summer than in the winter; no doubt in the eddies and currents the steering of a vessel is more difficult, and vessels in shoal water and tide ways are not as manageable as in still and deep water; I do not know any law regulating signals in going in and out of the Mississippi river.

5. At sea, in clear weather and broad day, it is not common to have a special look-out; wherever any particular danger is to be expected, as running into land, toward an island, or the mouth of a river, it is; that has always been my practice.

6. I only can obtain from the respondents' testimony when the Clarissa perceived the Concord was aground, and that was but a few minutes before the collision.

7. It is a common thing, and not bad judgment, in my opinion.

8. The indication is, that he considers the ship beyond her danger, and when his services are no longer required.

9. I should think the barque, in contrary currents and touching, would be likely to sheer and would be unmanageable, perhaps so far as not to obey her helm readily; if her helm was four or six inches deep in the mud, it would increase the difficulty, if it did not stop her altogether.

10. To me it intimates that she was obeying her helm and well.

11. Yes, there was, I think, time to brace back the sails; as I understand the wind was nearly aft, I don't think bracing the yards up would have had much effect in paying her off or deadening her way.

12. If she had anchored in less than her draft, the barque would have been likely to have struck on her anchor; if the barque had sheered so as to anchor, I think she could have sheered clear the vessel; it would have required a long scope, I suppose sixty to eighty fathoms, and five minutes to anchor her.

13. I recollect no evidence of it.

14. I don't think it shows it conclusively, because if the helm was "hard up" he might answer "hard up" in reply to the order.

15. I think the barque had altered her course, because the helm was not hard up; no order had been given to the helmsman but to steer two points clear of the ship, and when the captain saw the danger he cried "hard up," and the helm was then put up. I consider all the testimony in coming to this conclusion.

16. I know nothing. CHAS. PEARSON.

UNITED STATES OF AMERICA,
First circuit, district of Massachusetts.

The thirtieth day of April, A. D. (1850) eighteen hundred and fifty, the above named Gifford, and on the fourth day of June, eighteen hundred and fifty, the above named Quincy, and on the fifth day of said June, the above named Pearson, personally appeared before me, and each being severally sworn to speak the truth, the whole truth, and nothing but the truth, in relation to the cause for which his deposition was taken, was examined by me on the interrogatories annexed to the commission hereto prefixed and to him addressed, and his answers thereto written down by me, in his presence, after being carefully read over by him to me, were by him subscribed in my presence, as and for his deposition taken by authority of said commission for the suit therein specified.

EDW. G. LORING, *Com'r.*

Com. fee, 26.

A—E. G. L.

Having read the depositions of both parties relative to the ship Concord and bark Clarissa, there appears to be essential differences as to facts in several particulars, which must necessarily vary any given opinion as to the matter, as the one or the other was most relied on. The captain of the Concord says his ship drew 15 f. 3 inches of water, and that there were 14 feet where she grounded, dragging one or two feet through the mud. It is stated, on the other hand, that the Clarissa drew only 9 feet aft and 8½ feet forward; also that, a few minutes before the collision, when the said vessel would not answer her helm and came to, the lead was thrown and six inches less water found than the vessel's draft, or 8½ feet; now the Clarissa was right astern of and had followed the Concord, which ship aground had 14 feet, and when the pilot left a few minutes before he, the pilot, said there was five fathoms. It appears that after the collision the Clarissa swung round and drifted along the starboard side of the ship without touching; this confirms the statement of the Concord as to the depth of water, I think.

Answers to interrogatories.

To No. 1. Depending somewhat on a knowledge of the vessel's qualities, a much surer course would have been to have assisted the vessel to come to more, and passed to windward.

No. 2. If the wind admitted of the head-yards being laid flat aback, it would have accelerated the falling off and arrested her headway, both desirable under the circumstances. Probably the wind was too far aft to do this.

No. 3. I think, with some 6 inches of soft mud, a ship steering on a straight course would be under control with a 7 knot breeze; an attempt to turn round would be impeded by mud.

4. Under the circumstances I think not; being in the mud her speed would be slackened.

5. I should suppose the ship's being ashore would have been noticed sooner, yet I can conceive of its being otherwise—the captain and crew of the vessel astern being intent at the time on making sail, &c., and impressed with the idea of having the greatest speed.

6. No, I think not.

7. Partly from inattention at the wheel when the steamer left; the bark while the steamer was alongside had been governed by the steamer's rudder; when she left probably the bark's helm required a different position, and she came to because its position was not changed.

8. The ship in shoal water could not let go her anchors with safety without rounding to, and under her circumstances that might have been done at a distance of about 200 fathoms, and in a space of ten minutes.

9. Yes, collision avoided.

10. Better have gone to windward.

11. The neglect of the man at the wheel was in our opinion at the moment of leaving the steamer.

12. No.
13. Not a good reason.
14. Answered in 5th.

CHAS. PEARSON,
ALDEN GIFFORD.

Protest.

A. E. G. L.

STATE OF LOUISIANA,
City of New Orleans.

By this public instrument of protest, be it known, that on this nineteenth day of January, eighteen hundred and forty-four, before me, William Young Lewis, notary public in and for the city of New Orleans, duly commissioned and sworn, personally came and appeared John Lord, master of the ship called the Concord, of Boston, who declared that he sailed from New Orleans on the sixteenth day of January instant, bound for the port of Boston; that said vessel grounded on the bar of the southwest pass, and had been run into by the barque Clarissa, of Brunswick, and damaged, and compelled to return to the port of New Orleans for repairs; and required me (notary) to make record of the same, intending at more leisure to detail particulars.

And this day again appeared the said master, together with William H. Wyatt, mate, and Samuel N. Prince and Robert Turner, seaman, all of and belonging to said vessel, who, being severally duly sworn to declare the truth, did depose and say, that when said vessel sailed as aforesaid she was tight and strong, well manned and provided, and that nothing material occurred excepting descending the river, until the seventeenth day of January aforesaid, when they had a strong wind from the westward and got under weigh, having anchored the evening before, the steamboat Augusta being alongside; that at seven o'clock, a. m., the ship was abreast the pilots' station, and a pilot came off and went on board the steamboat, when said boat cast off from alongside, and went ahead, having a ten-inch cable belonging to her, and a five-inch cable belonging to the ship, as tow lines; that at a quarter past seven o'clock, a. m., the steamboat's hawser parted, and she got two more hawsers from the ship on board of her, which took the ship to the bar of the southwest pass; that at eight o'clock, a. m., the ship grounded on said bar, and all the hawsers parted; the steamboat then came alongside, head up the river, took a spring fast from the quarter, and backed, the ship at the same time making all sail, which started the said ship ahead, and at forty five minutes past eight o'clock, a. m., the pilot stated that the vessel was afloat, and the steamboat cast off, and he directed the captain to steer south for a short time; but in a very few minutes the ship grounded again, when the captain hailed the pilot and informed him thereof, who directed the captain to put all sail on the ship and drive her over, and then went off; they, however, made all sail, the ship healing over very much, but

did not move her; that at half past nine o'clock, a. m., the barque Clarissa, of Brunswick, came down the river with steam, and was left by said boat inside of the ship when she made sail, steering directly for the Concord, with a strong wind and tide; that they hailed said barque, and informed her the Concord was aground, but she did not alter her course, and soon afterwards ran into the ship, her bowsprit striking their taffrail directly over the starboard cabin window, breaking and carrying away every thing down to the transom in the truck, the cross planks all broken, and some of the planks on the bottom in the same condition; both davits and quarter knees carried away, the small boat and round-house stove to pieces, the wheel stauncheons broken, the starboard side of the cabin split and knocked to pieces, the barque's head and cutwater having run completely into it, and being both carried away, she swung around and drifted from the ship; came to anchor, and hoisted her colors half-mast, union down, when a steamboat went to her assistance; that at a quarter past ten o'clock, a. m., the ship floated over the bar and anchored in ten fathoms water, and hoisted a signal for a steamboat, when the Southerner came off to her and agreed to bring her in at high-water; all hands employed in clearing the wreck from the rudder and nailing boards and tarpaulings over the stern, to prevent the water from coming in; also all hands employed in removing cargo forward, to prevent the ship from filling with water if the sea should become high; that at three o'clock, p. m., the steamboat brought the barque inside the bar, and at five o'clock, p. m., came to the ship and brought her in over the bar, when it was deemed requisite for the preservation of vessel and cargo to return to the port of New Orleans for repairs, and she accordingly proceeded to said port in tow of the said steamboat Southerner, where she arrived and made fast at the dry dock at Algiers, when the necessary surveys were called, and they commenced repairing said vessel.

And thereupon these said appearers, and especially the said master, did protest, and with them, I, notary, at their request, do most solemnly and publicly protest, against the winds and the waves, and the dangers of the river generally, but more especially against the disaster herein set forth, as the cause of all the loss and damage in the premises, and that no fault, negligence, or mismanagement is or ought to be ascribed to these said appearers, or to any part of said ship's company.

Done and protested at New Orleans, this twenty-sixth day of January, eighteen hundred and forty-four.

The protestors hereunto signing their names with said notary.

(Signed) JOHN LORD,
WM. H. WYATT,
[L. S.] SAMUEL N. PRINCE,
ROBERT TURNER,
W. Y. LEWIS, *Not. pub.*

A true copy of the original.
New Orleans, 5th February, 1844.

W. Y. LEWIS, *Not. pub.*

Depositions taken under commissions issued from the circuit court, and used in the said case of William M. Peck and others, versus Benjamin T. Reed.

In admiralty.

UNITED STATES OF AMERICA.

[SEAL.] The circuit court of the United States, within and for the Massachusetts district.

MASSACHUSETTS DISTRICT, *ss.*

To Ebenezer Everett, or Nathaniel Badger, of Brunswick, State of Maine, esquires.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed, of Samuel Swanton, John Patten, Isaac Merrit, of Bath, and Joseph Badger, Richard McManus, Clement Martin, Nehemiah Larrabee, of Brunswick, Maine.

Witnesses to be examined on behalf of the respondents, and to be used in a certain cause now pending in said court, wherein William M. Peck et als. are respondents, versus Benjamin T. Reed, libellant.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce, or cause the same to be reduced, to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, now holden at Boston, as soon as the same shall have been executed.

Depositions to be taken on paper corresponding in size with this commission. } In testimony whereof we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this sixteenth day of August, in the year of our Lord one thousand eight hundred and fifty.

EPHRAIM BROWN, jr., *Clerk.*

N. B. You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the depositions, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponents whilst giving their depositions in answer to the interrogatories annexed to this commission. And you shall take such depositions in a place separate and apart from all other persons, and permit no person to be present during such examination,

except the deponents and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk to assist you in reducing the depositions to writing. And you shall put the several interrogatories and cross interrogatories to the deponents in their order, and take the answer of the deponents to each fully and clearly.

UNITED STATES OF AMERICA,
Circuit court, U. S., Massachusetts district, ss.

May term, 1850. In admiralty.

REED
vs.
PECK.

Interrogatories to Captain Samuel Swanton, Captain John Patten, Captain Isaac Merritt, of Bath, State of Maine, and to Captain Joseph Badger, Captain Richard McManus, Captain Clement Martin, and to Captain Nehemiah Larrabee, of Brunswick, Maine, experts.

Interrogatory 1. What is your name, age, and place of residence, and occupation?

Interrogatory 2. Whether or not you are expert in nautical matters, and have been entrusted with command of ships; if so, how many, and how long have you sailed as master, and how long have you been a seafaring man?

Interrogatory 3. Have you or not frequently voyaged to and from New Orleans, and whether you have any or much knowledge or acquaintance with the river and its passes and bars, between New Orleans and the Gulf of Mexico?

Interrogatory 4. Whether or not there are any currents and tides which set in different directions, and whether there are any cross currents and under currents about the bars of the Mississippi at its mouth, and whether or not the effect of these currents is to render navigation more or less difficult, and whether it affects the ease with which a vessel can be steered when within their influence, and whether it causes vessels to take a sheer and become ungovernable and under what circumstances?

Interrogatory 5. Whether prudence and skill can or cannot avoid or obviate these liabilities, and if so, to what extent?

Interrogatory 6. Whether or not a barque or vessel under but little sail as topsails and jib, with a good breeze, is in such currents and tide ways as exist about the bars of that river as manageable as under full sail?

Interrogatory 7. Whether or not there are many hammocks or nubbles on the bar and about it, and do they constitute any difficulty in navigation, please answer fully. Supposing a ship sailing on the wind with her larboard tacks on board, were to strike such hammock or nubble on her larboard quarter, should it have any tendency to throw her up in the wind?

Interrogatory 8. Whether or not collisions in getting over the bar

of this river are not of frequent occurrence, and whether or not among those accustomed to sail there such collisions are supposed to be the result of fault and blame generally; also whether owing to the peculiarities in nature; care, skill, and prudence, when properly exerted, are these as successful in avoiding such danger as they usually are elsewhere? Objected to.

Interrogatory 9. Please examine fully and carefully the copies of the depositions hereto appended, viz., those of Capt. Melcher, of Thos. A. Melcher, of Capt. Lord, of J. M. Pierce, of Dennett, and having read them or heard them read, answer the following interrogatories:

Interrogatory 1. Do you or not conceive that there was any apparent danger of collision before the Clarissa luffed or was thrown into the wind?

Interrogatory 2. Whether or not you conceive, after the Clarissa was so thrown into the wind, she could have anchored before the collision occurred?

Interrogatory 3. Whether or not a mariner of competent skill and judgment would have seen any such preponderating reason for letting the barque drive on the course she was heading after she luffed, as to make it unskilful or unseamanlike conduct to put his helm hard up and brace his yards sharp, or to endeavor to go to leeward of the ship?

Interrogatory 4. Whether or not you consider there was time sufficient for the Clarissa to have braced her yards aback after she was luffed by the causes stated in the testimony, and whether such bracing aback of the yards would have, under the circumstances there stated, been better seamanship or more prudent than bracing them sharp up?

Interrogatory 5. Whether or not you perceive from the testimony any act done by the master and mariners of the Clarissa which indicates a want of due skill or diligent prudence? Objected to.

Interrogatory 6. Whether or not many stringent regulations are not made in all crowded ports, harbors, rivers, and channel ways, to restrict and prevent ships from anchoring in the channel ways used in navigation? Objected to.

Interrogatory 7. Whether or not it is a great danger and impediment to navigation, and a cause of accidents, for ships and other vessels to anchor in the usual channel ways leading between great ports and the ocean? Objected to.

Interrogatory 8. Whether or not such impediment to free and safe navigation is not equally created by a large ship getting aground in the channel over a bar, as if she had anchored in the same position, and would not chances of collisions thereby be much increased, and why? Objected to.

Interrogatory 9. Whether or not the ship Concord bedded in the mud, with her sails all trimmed and drawing, was an obstruction in the navigation at that point, and whether such collision would or not have been equally certain to have occurred had the Concord been afloat? Objected to.

CHAS. LEVI WOODBURY,
Proctor for respondents.

Cross interrogatories.

1. Have you any interest in the result of this suit, or are you connected with any of the parties thereto; if yea, in what manner?
2. Is not a vessel under her topsails and jib with 7 or 8 knot fair wind, generally manageable?
3. Have you said in answer to the 8th interrogatory that collisions in the Mississippi at its mouth are of very frequent occurrence? If yea, please to state how many you have known to have occurred there, and the times when?
4. Is not a vessel coming up with another stationary or sailing very slowly, bound to keep a look-out so as to steer clear of the ship ahead?
5. Supposing that the Concord was aground half an hour or more before the collision, and that the Clarissa was coming towards her at the rate of 8 to 12 knots an hour; how do you account for it that it was not known on board the Clarissa that the Concord was aground till just before she struck her?
6. Can you account for it in any way except that there was no look-out kept on board of the Clarissa, or a negligent one?
7. If the course of the Clarissa had not been altered when she swung to windward of the ship, would she not in your judgment have gone clear? If not, please state the reasons of your opinions.
8. How far off from the ship might the barque have come to anchor?
9. Is it not stated by the master and mate of the Clarissa that if they had known that the ship was aground in season the collision might have been avoided?
10. Was the collision an inevitable accident, or might it have been prevented if the fact that the ship was aground had been observed on board the barque sooner than it was?
11. Supposing that the man at the helm of the barque did not hear or obey the direction of the pilot to steer two points to leeward of the ship, would not that account for the collision?
12. If you have spoken of the Concord's being an obstruction when aground to the course of navigation, please to state whereabouts you suppose her to have been; if in the river, how broad it was there; and if out of the river, how she was an obstruction any more than if under sail, and whether you mean to imply that she was in any fault, or that the Clarissa had a right to run into her because she was aground.

F. C. LORING.

A true copy. Attest; E. BROWN, Jr.,
Clerk.

1, Samuel M. Prince, of Falmouth, in the State of Maine, mariner, of lawful age, to testify on oath, depose and say, in answer to questions by F. C. Loring, counsel for B. T. Reed, libellant:

1. Were you on board the ship Concord, which sailed from New Orleans on or about the 16th January, 1844, for Boston, and in what capacity?

Ans. I was on board as second officer.

2. Whether or not said ship in coming out of the river grounded on the bar of the SW. pass?

Ans. She did, sir.

3. How long did she remain aground; whether or not exertions were made to get her off; with what success?

Ans. Perhaps she remained aground, as near as I can judge, three quarters of an hour, or half an hour; exertions were made to get her off, and they succeeded; I don't recollect exactly the time she remained aground.

4. Whether or not while she was aground did a barque called the Clarissa come down the river; if yea, whether or not with steam; when did the tow-boat leave her; whether inside or outside of the Concord?

Ans. While the Concord was aground the Clarissa came down the river with steam, and the tow-boat left her inside of the Concord.

5. Whether or not did the Clarissa make sail after the tow-boat left; if yea, in what direction did she steer in reference to the Concord?

Ans. The Clarissa made sail after the tow-boat left her, and steered right for the Concord; near enough to touch us.

6. Whether or not was the Clarissa hailed from the Concord; if yea, by whom; what was said?

Ans. The Clarissa was hailed; I told her the Concord was ashore.

7. Whether or not did the Clarissa alter her course after she was so hailed, and whether or not was there room enough for her to pass on either side of the Concord; whether or not was there time enough to alter her course after she was hailed, so as to clear the Concord?

Ans. The Clarissa did not alter her course after she was hailed; I don't know whether she could pass inside or not, because of shoals, and I know nothing about them; she could have passed to windward if she had had a mind; if she had understood what was said there was then time enough to alter her course, so as to clear the Concord after she was hailed, I should think.

7½. Whether or not was the Clarissa hailed loudly and distinctly, or otherwise?

Answer. She was hailed loudly and distinctly, to the best of my knowledge.

8. Whether or not was there any thing in the state of the wind, or any cause which rendered it difficult or impossible for the Clarissa to steer to windward of the Concord?

Answer. There was nothing in the wind to prevent; the tide was right with her running out; and to my knowledge there was no other cause rendering it difficult or impossible for the Clarissa to steer to windward of the Concord.

9. How long had the Concord been aground before the Clarissa struck her?

Answer. I should judge not more than 20 minutes, as near as I can judge.

10. Whereabouts did the Clarissa strike the Concord; what damage, if any, did she cause?

Answer. The Clarissa struck the Concord about two feet, or thereabouts, from the stern-post; she broke all the planks that run across the stern; drove in the transom; stove up some of the deck planks; stove the jolly boat at the stern all to pieces; the round-house and wheel stauncheons were broke; two planks were started from the bottom; and I don't recollect any thing else material; it stove all the afterworks connected with the transom to pieces in the cabin.

11. What was done to the Concord after the collision?

Answer. She was brought to an anchor, and tarpaulins and boards were nailed over the hole the Clarissa made into her to keep the water out as much as possible; the cargo was taken out of the run and lower hold and shifted forward to tip her by the head; a signal for a steamboat was hoisted directly the anchor was down, and she came off, but could not take the Concord off till high tide; she promised to come then, and did, and carried us to New Orleans at Algiers; the ship was repaired there; I don't know the particulars of expenses; she then proceeded right on to Boston.

12. Whether or not was a protest made at New Orleans concerning the matter inquired of; whether or not did you sign and swear to the same; whether or not did you then know or believe, and do you now, that statements therein are true; whether or not is the paper exhibited a copy thereof?

Answer. I signed a protest at New Orleans, it was read to me and was correct; the copy is the same as near as I can recollect that was read, it is marked A E G L.

Cross interrogatories by Mr. Upham, counsel for William M. Peck and others, respondents.

1. Did you come down the river with steam?

Answer. We did, sir.

2. State more fully the circumstances as to the grounding of the Concord.

Answer. Before the steamboat which towed us down had got out of hail, the Concord brought up; the captain hailed the pilot who was on board the steamboat, and said we were aground; the pilot told us to crowd sail and force her over; we crowded sail but she wouldn't start; the Concord touched while the pilot was taking her over the bar, and parted the ship's hawser; then we took a hawser from the steamer; the pilot, before he cast off said, we were all clear, and gave the captain the course for a short time.

3. What were you doing immediately after the Concord struck, and how long afterwards before you hailed the *Concord?*

Answer. I was seeing that the anchors were got on to the bow when she struck, and I hailed the *Concord* I should judge five or ten minutes after, as near as I can recollect.

SM. N. PRINCE.

U. S. A., DISTRICT OF MASSACHUSETTS.

On the twelfth day of June, A. D. eighteen hundred and forty-six, personally appeared before me the above named Prince, and after being sworn to speak the truth, the whole truth, and nothing but the truth, in relation to the cause for which his deposition was taken, was examined by the parties herein after named, on written interrogatories, which, with his answers thereto, written down by me in his presence, were by him subscribed in my presence as and for his deposition.

Taken at the request of Benjamin T. Reed et als. to be used in an action now pending between him and William M. Peck et als., in the district court of the United States, for the district of Massachusetts, and said adverse party attended; said deponent being bound to sea, is the cause of taking this deposition.

EDWARD G. LORING, *Commissioner.*

Agreed to be kept off file, and for the use of parties.
A true copy.
Attest: S. E. SPRAGUE, *Clerk.*

I, John Lord, of Ipswich, in the Commonwealth of Massachusetts, of lawful age to testify on oath, depose and say, in answer to interrogatories to me addressed by F. C. Loring, counsel for the libellants.

1. Were you master of the ship Concord on her passage from New Orleans for Boston, in January, 1848; if yea, at what time of the day did you sail, and at what time did the steamboat leave you; whether or not were you then aground?

Answer. I was master of the Concord on the passage referred to; we started for Boston on the morning of the 17th, at 4 o'clock, a. m.; the steamboat left us between half past and three-quarters past 8 o'clock; and at the moment the boat left us we were not aground, but I told them of it before they were out of hearing.

2. How much water did the Concord draw at that time?

Answer. Fifteen feet and two or three inches.

3. Whether or not did you ground immediately on tow-boat leaving [you,] and *and* remain fast?

Answer. We did.

4. How broad is the river in the place where she grounded, and how much room was then on both sides?

Answer. We were out of the river, over the bar and at sea, there was no shore either side, except little reefs, &c., and we were outside of them.

5. Was there or not any thing to prevent a vessel from going either side of you?

Answer. I should think not; at the entrance of the Balize hammocks are formed by the tide which are sometimes out of water and then disappear, and on one [of] those our ship stopped.

6. Which way was the wind, and was it fresh and strong, or otherwise?

Answer. The wind was from the westward and very strong.

7. What did you do, if any thing, to get your vessel off?

Ans. We made all sail to force her over, but she didn't go.

8. Whether or not is there any crook or turn in the river, or anything to prevent a vessel where the Concord was when aground, from being seen for several miles up the river?

Ans. Nothing.

9. Where were you when the Clarissa struck you; did you or not see her before she struck?

Ans. I was in the cabin when she struck us; I saw her coming down with a steamboat ahead of her before I went below; she had no sail, I think.

10. When you came on deck where was the Clarissa, and what did she do?

Ans. When I got on dock she was ten or fifteen feet directly astern of my ship in the act of swinging round.

11. What damage did the Concord suffer from the collision, and what expenses were incurred at New Orleans, and elsewhere for repairs? If you have the bills, produce them.

Ans. The Concord was cut down from taffrail to the transom on the larboard side of the rudder; stern boat and round-house deck plank ripped, &c., the bills and expenses incurred and paid at New Orleans are produced to me and marked A E G L, and B E G L; those bills were paid by my order.

12. In how deep water were you before [she] struck?

Ans. Perhaps five minutes before she struck, the pilot of the steamer, about to leave us said, you are all clear now, and in five fathoms of water.

13. Did the Clarissa run into you again, or swing by and ahead of you?

Ans. She swung round and drifted ahead again without touching us on the starboard side.

14. How was the weather, clear and fair, or otherwise?

Ans. Clear and fair.

Cross interrogatories by R. Rantoul, esq., counsel for the respondents.

1. In what direction was the Clarissa from you when you first saw her; how far distant, and how heading?

Ans. Directly astern of us; heading to very much the same point we were, and that was to the southwest, if I recollect right; she was two or three miles off, I think, when I first saw her, heading as I have stated.

2. Was the wind northwest, and about an eight knot breeze, when the collision took place?

Ans. I think there may have been a little northing in the wind, but

it was what I called a strong westerly wind; it was more than an eight knot breeze for the Concord.

3. Had you struck or touched before you grounded; if so, how often and how long?

Ans. We had touched or struck on the bar at times for three-quarters of an hour before we grounded, perhaps more, and parted hawsers, and the management was left to the steamboat.

4. Could the Clarissa have gone to leeward of the Concord as well as to windward?

Ans. It is my opinion she could have gone either side, as far as the wind was concerned she could, for it was a fair wind.

5. If the Clarissa had headed as she did when you first saw her would she not have gone to leeward of you?

Ans. At the distance I saw her a point one way or the other could have carried her clear; she appeared to be heading directly down to us and following us; she was in tow of the steamboat.

6. How much water did the Clarissa draw?

Ans. I can't say; after she got up to town she drew 12½ feet; but they had trimmed the cargo aft to get her leak forward out of water.

7. How much water had you under you when you first touched on the bar?

Ans. About fourteen feet, dragging through one or two feet of mud.

8. What was the bottom.

Ans. Soft mud.

9. How were the Clarissa's yards braced immediately before the collision; were they so as to facilitate her falling to the leeward?

Ans. I didn't see.

10. Is there a strong current in the middle of the river, with eddies on each side, at that place?

Answer. I should think the current was there three or four knots, and a regular current at the time; it was hardly in the river but out of it; some ways outside the light-house.

11. Did you meet the captain of the Clarissa a few days after the collision, at New Orleans, and talk with him about the accident?

Answer. I frequently met him, as we were repairing very near together, and undoubtedly talked *about* with him about the accident; I remember no particular conversation.

12. Did you propose to him to go before the same notary and make protest, so that both could get your insurance?

Answer. I should think not; I know I did'nt; I had been to a notary before I saw him.

13. What sail had the Clarissa set when she struck you?

Answer. Topsails and courses; but the sheets of one of the topsails appeared not to have been hauled home, or to have been let go.

JOHN LORD.

U. S. district of Massachusetts

This thirteenth day of April, (1848,) A. D. eighteen hundred and forty-eight, personally appeared before me the above named Lord, and having been sworn to speak the truth, the whole truth, and nothing but the truth, in relation to the cause for which his deposition was taken, was examined by the parties hereinafter named on written interrogatories, which with his answers thereto written down by me in his presence, after being carefully read over to him by me, were by him subscribed in my presence, as and for his deposition. Taken at the request of B. T. Reed, to be used in a libel pending between him and W. M. Peck et al., before the district court of the United States, for said district, holden at Boston therein, said deponent being bound on a voyage to sea is the cause of taking this deposition, and said adverse party attended.

EDW. G. LORING,
Commissioner.

Com. fee, $4 00.
A true copy.
Attest: S. E. SPRAGUE, *Clerk.*

Deposition of Joseph Melcher.

I, Joseph Melcher, of Freeport, State of Maine, of lawful age, in answer to the interrogatories and cross interrogatories submitted to me in the libel of Reed vs. Peck et al., doth depose and say as follows:

To the first interrogatory filed by respondents I answer, that I was on board the Clarissa on or about the fourteenth day of January, A. D. 1844, in the capacity of master.

To the 2d I answer, that said bark was perfectly sound in sails, rigging, and hull.

To the 3d I answer, that I do not recollect the day of the week she got under weigh and proceeded down the river, but know it was on [the] evening of the 14th of January, A. D. 1844.

To the 4th I answer, that she remained at anchor in the river from six o'clock the night of the sixteenth of January, A. D. 1844, till about nine o'clock the next morning; the cause of anchorage was thick weather.

To the 5th I answer, that she further proceeded down the river on the 17th of said January.

To the 6th I answer, that it was with the aid of a steam tow-boat.

To the 7th I answer, that on said latter day the weather was clear; in the forenoon a strong wind from the northwest, in the afternoon light and variable.

To the 8th I answer, that the steam tow-boat came alongside about 9 o'clock in the morning of the 17th of said January.

To the 9th I answer, that there was a pilot on board the barque who came in the steam tow-boat.

To the 10th I answer, that the steam tow-boat cast off from the barque at eleven o'clock and thirty minutes of the morning of the 17th of said January.

To the 11th I answer, that the pilot left at the same time the tow-boat left.

To the 12th I answer, that the ship Concord, Swarrow, and some others, whose names I did not know, were in sight at the time.

To the 13th I answer, that the ship Swarrow was about six miles in the offing; the Concord was a short distance ahead; the other vessels were astern, some at anchor, others getting under weigh.

To the 14th I answer, that the pilot told me to steer two points to the leeward of the ship Concord, or south southwest, and those orders were obeyed.

JOSEPH MELCHER.

To the 15th I answer, she held the course instructed by the pilot about 2½ minutes, when she immediately swung to, to a point to windward of the ship.

To the 16th I answer, that she obeyed her helm for 2½ minutes after the steamer cast off as usual, after that she did not; I think the cause of her not obeying her helm must have been produced by her striking the mud, for I immediately threw the lead and found six inches less water than the barque drew.

To the 17th I answer, that the barque after the tow-boat cast off, held the course instructed by the pilot about 2½ minutes as I have before stated, when she swung to a point to windward of the ship; I immediately ordered the helm hard up; the reply of the helmsman was hard up; my first thought upon the barque swinging to was owing to the neglect of the helmsman, but upon his reply I knew that could not be the case; and immediately threw the lead and found as I before stated six inches less water than the barque drew; in the mean time she fell off heading directly for the ship Concord, and not minding her helm, remained in that direction until she struck.

To the 18th I answer, that it was about five minutes after the tow-boat cast off that the collision took place.

To the 19th I answer, that it was the same time after the pilot left.

To the 20th I answer, that I did not observe that the Concord was aground until the Clarissa swung to and began to fall off again; it was near two minutes before the collision.

To the 21st I answer, that the wheel was kept hard up, and the head sails braced, with the wind abeam, in the hopes that she would fall off enough to clear the ship; the reason they were not successful, because the barque was dragging in the mud.

To the 22d I answer, that after the danger of the collision was seen it could not have been avoided.

To the 23d I answer, that there is a strong current in the middle of the river, with slight eddies on each side.

To the 24th I answer, that we immediately cleared away the anchors

and fetched her to, and got preventer tackles on the head stays to prevent the foremast from going over board, and tried the pumps and saved what things we could.

To the 25th I answer, the flying jibboom, jibboom and bowsprit, were carried away, together with head rails, head and cutwater, also cat-head, one anchor stalk, forecastle deck, plank shearing, and starting the wood ends below the surface of the water, also chafing, and cutting the bowsprit rigging, the bob stays were lost, the head sails were torn, and the windlass unshipped.

To the 26th I answer, that the Clarissa, in consequence of the collision, was towed back to New Orleans, unloaded, taken into the dry dock; she was then recaulked, new breast hooks, new bowsprit, new jibboom, new cat-heads, new head rails, and cutwater, new head, new anchor stalk, new forecastle deck, new bowsprit rigging, were all made to her, and such other little repairs as were necessary.

JOSEPH MELCHER.

To the 27th I answer, that thirty-one hundred dollars *was* paid for repairs on the Clarissa in consequence of the collision; it was at least one thousand dollars loss to the owners of the Clarissa on account of her detention; their loss on account of the collision was five hundred and twenty dollars.

To the 28th I answer, that a few days after the collision I saw the captain of the Concord in New Orleans; he never mentioned any such thing as damaged on account of the collision; attached no blame to me, but wished for both of us to [go] to the same notary to make our protest, so that there should be no difficulty in each of us getting our insurance; I told him I had made my protest and extended it, and had nothing more to do.

Cross examination.

To the 1st cross interrogatory filed by libellants I answer, that I am thirty-eight years old; I reside in Freeport, State of Maine; am a sea-captain; and was on board the Clarissa at the time inquired of, in the first interrogatory, in the capacity of master.

To the 2d I answer, that I owned one-eighth part of the Clarissa at the time of the collision, but do not own any now.

To the 3d I answer, that I was interested in her earnings and losses to the amount of one-eighth part of the barque.

To the 4th I answer, that I am interested in the result of this suit.

To the 5th I answer, that the tonnage of said barque was two hundred and twenty-four tons; she drew, in her best sailing trim, twelve feet aft and eleven and one-half feet forward.

To the 6th I answer, that she was a fair sailing vessel, easily managed, and uncommonly easy to steer.

To the 7th I answer, that when she sailed from New Orleans in January, A. D. 1844, she had on board about one hundred and fifty

barrels of heavy cargo, the rest light; the cargo consisted of oil, rosin, leather, clocks, pitchforks, &c., &c., &c. She was not fully laden. She drew, with this cargo, nine feet aft and eight and one-half feet forward.

JOSEPH MELCHER.

To the 8th cross interrogatory I answer, that there were ten persons on board—names as follows: Thomas N. Melcher, first mate; Daniel Dunham, second mate; James McFarlane, Peter Glasgow, seamen; rest unknown; there were no passengers. I don't know where they are now to be found.

To the 9th I answer, that I do recollect distinctly, and of myself, the circumstances of the barque Clarissa coming in collision with the ship Concord. I have had some conversation with the owners in regard to the collision, but not within three months. I have received no information from any one in regard to the collision.

To the 10th I answer, that I have received no letters from any person or persons about such collision, and the circumstances thereof, or respecting the testimony to be given by me in this suit.

To the 11th I answer, that when the Concord was first seen from the Clarissa she was five miles distant, in a southwest direction; the Clarissa had no sails set; the Concord was making sail with a tow-boat along side, crossing the bar; the wind was fresh from the northwest.

To the 12th I answer, that the Clarissa was about one and one-half mile from the Concord when the tow-boat and pilot left the Clarissa, in a northeast direction from the Concord. The jib and spanker were set when the tow-boat left, the topsails and top-gallant-sails were loosened and ready to sheet home.

To the 13th I answer, that the Clarissa, if she had kept on the same course as when the pilot left, she would not have struck the Concord; her course was not altered after the pilot left, until she swung to of her own accord.

To the 14th I answer, that it was discovered that the Clarissa did not mind her helm as usual about three minutes before she struck the Concord.

To the 15th I answer, that I am certain the reason the Clarissa did not mind her helm was because she dragged on the bottom.

To the 16th I answer, that I knew such to be the cause of her not minding the helm, from the fact of the helm being hard up and she not minding it, and my immediately throwing the lead and finding six inches less water than she drew. It first occurred to me that such was the cause when I found the helm hard up and she did not mind it.

To the 17th I answer, that if I had known that the Concord was aground when I was two miles off, a collision might have been avoided.

To the 18th I answer, that the Concord was about one hundred and twenty fathoms from the Clarissa when it was first discovered the Con-

cord was aground; it was first observed by myself; the yards were immediately braced, and the wheel kept hard up.

JOSEPH MELCHER.

To the 19th cross interrogatory I answer, that the Clarissa was sailing at that time with a favorable wind, and in a very strong current, at the rate of about eight miles an hour; she was a fair vessel for sailing.

To the 20th I answer, I have not said she fell off until she swung to, and then the cause of her falling off was owing to keeping the helm hard up and bracing the sails; her falling off was what I wished, and if she had fell off a point further she would have cleared the ship.

To the 21st I answer, that when the pilot left the Clarissa the Concord was about one and one-half miles off, in a southwest direction. If she had kept her course, and not swung to, she would have gone to leeward of the Concord and cleared her.

To the 22d I answer, that when the Clarissa swung to a point to windward of the Concord the helm was put hard up and sails braced.

To the 23d I answer, that if the wheel had been put down or kept amidships the Clarissa would not have cleared the Concord to windward, for the reason that the current swept directly on to the Concord, and there was not wind sufficient to carry her to windward.

To the 24th I answer, that I know of no other matter that will benefit the libellants in this case.

JOSEPH MELCHER.

Deposition of Daniel J. Dunham.

I, Daniel J. Dunham, of Brunswick, State of Maine, of lawful age, in answer to the interrogatories and cross interrogatories submitted to me in the libel of Reed vs. Peck and al., doth depose and say as follows:

To the first direct interrogatory filed by respondents I answer, that I was on board the barque Clarissa on or about the fourteenth day of January, A. D. 1844, and in the capacity of second mate.

To the 2d I answer, that the barque was in a good condition; every thing was sound and in good order; she was well fitted and well manned.

To the 3d I answer, that I do not recollect the exact day of the week and month we got under weigh and proceeded down the river, but know it was some time in January, 1844.

To the 4th I answer, that she remained at anchor in the river about fourteen hours on account of bad weather.

To the 5th I answer, that between nine and ten o'clock on the morning after we had been at anchor we further proceeded down the river.

To the 6th I answer, that it was with the aid of a steam tow-boat.

To the 7th I answer, that it was clear weather, with the wind northwest.

To the 8th I answer, that the steam tow-boat came alongside about nine o'clock in the morning.

To the 9th I answer, that a pilot came aboard the barque at the time the steam tow-boat came.

To the 10th I answer, that the steam tow-boat cast off from the barque between ten and eleven o'clock of the same morning.

To the 11th I answer, that the pilot left at the same time the steam tow-boat left.

To the 12th I answer, that at that time I recollect of seeing only the ship Concord and one other vessel.

To the 13th I answer, that the ship Concord was directly ahead, about a third of a mile distant, under all sail, and apparently clear of the bar; the other vessel was ahead about six miles, and under full sail.

To the 14th I answer, that the pilot on leaving gave orders to make sail and steer two points to the leeward of the ship Concord; those orders were obeyed.

To the 15th I answer, that the barque held the course directed by the pilot about three minutes, when she swung to to a point to windward of the ship; she then fell off a point, heading directly for the ship; which course she held until she struck.

DANIEL J. DUNHAM.

To the 16th I answer, that she obeyed her helm for about three minutes after the tow-boat cast off; after that she did not, on account of her striking the mud.

To the 17th I answer, that the barque, as I before stated, held the course directed by the pilot for about three minutes after the tow-boat cast off; she then swung to to a point to windward of the ship; the helm was immediately put hard up; the head sails were braced for her to pay off and jib hoisted; she fell off a point heading directly for the ship, and continued that course in spite of all we could do, till she struck the ship.

To the 18th I answer, that it was about five minutes after the tow-boat cast off from the Clarissa before the collision took place.

To the 19th I answer, that it was the same time after the pilot left.

To the 20th I answer, that it was not until after the Clarissa had swung to and fallen off, heading directly for the ship, that it was discovered the ship was aground; it was about one minute before the collision.

To the 21st I answer, that after the barque swung to, her helm was put hard up and head sails braced in hopes she would fall off and clear the ship; the reason these efforts were not successful was because the barque was in the mud.

To the 22d I answer, that after the danger of collision was seen it could not have been avoided.

To the 23d I answer, that in that part of the river there is a strong current running out.

To the 24th I answer, that we swung clear of the ship and immediately dropped our anchors; we then put tackles on our head-stays to save our foremast; we also tried our pumps and found the barque was making a great deal of water; we then set our colors for assistance.

To the 25th I answer, that the jib-boom, bowsprit, both cat-heads, head and cut-water, were carried away; the forecastle deck was ripped up, and the wood ends were started.

To the 26th I answer, that a new bowsprit, new jib-boom, new cat-heads, new head, new cut-water, new forecastle deck were made on account of the collision; her bottom was recaulked and painted.

To the 27th I am unable to make any answer.

To the 28th I answer, that I know of no circumstances other than I have stated.

DANIEL J. DUNHAM.

Cross interrogatories.

To the 1st cross interrogatory filed by libellants I answer, that I am twenty-three years of age; reside in Brunswick, State of Maine; occupation, seaman; I was on board the barque Clarissa at the time inquired of in the first interrogatory in the capacity of second mate.

To the 2d I answer, that I was not then, nor am I now, an owner or part owner in the barque Clarissa.

To the 3d I answer, that I was not then directly or indirectly interested in said vessel or in her earnings.

To the 4th I answer, that I am not directly or indirectly interested in the result of this suit, nor is it of any interest to me whether the owners prevail in this suit or are defeated.

To the 5th I answer, that the tonnage of the barque was about two hundred and twenty-five tons; I do not know what her best sailing trim was, neither do I know how much water she drew when in her best sailing trim.

To the 6th I answer, that the barque was a fair sailing vessel, easily managed and obedient to her helm.

To the 7th I answer, that when she sailed from New Orleans in January, 1844, she was loaded principally with heavy articles; it consisted principally of beef, pork, and corn, she was fully but not deeply laden; I don't know how many feet she drew forward and aft.

To the 8th I answer, that at that time there were ten persons on board, names as follows: Joseph Melcher, of Freeport, master; Thomas A. Melcher, of Brunswick, 1st mate; myself, 2d mate; names of the others were unknown; there were six men before the mast, one steward, no passengers; Joseph Melcher is now in Freeport; Thomas A. Melcher is it sea; I know not where the others are.

To the 9th I answer, that I do recollect distinctly and of myself the circumstances of said vessels coming in collision; I have had no conversation with any one relative to the same, or received any information in regard to the same.

To the 10th I answer, that I have not received any letters from any one about such collision, or the circumstances thereof, or respecting the testimony to be given by me in this suit.

To the 11th I answer, that the Clarissa was about two miles from the Concord when she was first seen, in about a northeast direction from the Concord; the Clarissa at that time was under no sail; I don't recollect what sail the Concord was under; the wind was northwest, blowing fresh.

DANIEL J. DUNHAM.

To the 12th cross interrogatory I answer, that when the tow-boat left the Clarissa she was about one-third of a mile from the Concord in a northeast direction; at that time the foretopsail and jib were set.

To the 13th I answer, that if she had kept on the same course in which she was when the pilot left, she would not have struck the Concord; her course was not altered until she swung to of her own accord.

To the 14th I answer, that it was discovered that she did not mind her helm as well as usual about two minutes before she struck the Concord.

To the 15th I answer, that I am certain the reason the Clarissa did not mind her helm as well as usual, was because she struck in the mud.

To the 16th I answer, that it must have been the true cause, because the helm was hard up, the head sails were braced, and there was sufficient wind to make her pay off had she not been in the mud; the reason of her not paying off can be accounted for in no other way; it was suggested as soon as the sails were braced, and she did not mind her helm.

To the 17th I answer, that if the fact that the Concord was aground had been known early enough for us to have come to an anchor, the collision might have been avoided.

To the 18th I answer, that the Clarissa was about sixty fathoms from the Concord when it was discovered she was aground. I don't know who first observed it, but think it was the captain; the helm was immediately put hard up, and head sails braced, in hopes she would fall off and clear the ship.

To the 19th I answer, that the Clarissa was sailing under the influence of a favorable wind and tide, I think at the rate of about seven miles an hour; she was a fair vessel for sailing.

To the 20th I answer, that she did not fall [off] until after she had swung to; then her falling off was caused by the helm's being hard up, and sails braced; which was what we wanted, in hopes she would clear the ship.

To the 21st I answer, that when the pilot left the Clarissa the Concord was about a third of a mile distant, in a southwest direction; if the Clarissa had kept her course she would have gone to leeward of the ship.

To the 22d I answer, that when the Clarissa swung to to windward

of the Concord, the helm was immediately put hard up, the head sails were set and braced.

DANIEL J. DUNHAM.

To the 23d cross interrogatory I answer, that if the helm had been put down, or if it had been kept amidships, I think the Clarissa would not have gone to windward of the Concord, for the reason that we were so near the Concord when it was discovered she was aground, and there being a very strong current setting directly on to the ship, and the wind being a little quartering.

To the 24th I answer, that I know of no matter or thing other than has been stated.

DANIEL J. DUNHAM.

I, Thomas A. Melcher, of Brunswick, in the State of Maine, master mariner, on oath depose and say, in answer to interrogatories to *him* addressed, and annexed to the commission hereto prefixed—

1. I was on board the barque at that time as mate.
2. She was in good condition to go to sea.
3. The day of the month or week I don't now recollect, in which she proceeded down the river.
4. She came to anchor in the evening, because they couldn't go over the bar in the night.
5. The next morning, between 8 and 10 o'clock, we weighed anchor, and proceeded down the river in tow of a steamer made fast alongside.
6. With a steamboat, as stated.
7. The weather was clear and the wind northwest, blowing a strong breeze.
8. Between the hours of eight and ten; I can't state more precisely.
9. There was.
10. The steamer cast off the barque in about half an hour after she made fast.
11. The pilot left when the steamboat did, and in her.
12. The only vessel I recollect as being in sight was the Concord, ahead under full sail.
13. She bore about south, and appeared to have the wind on her starboard quarter, and all sail set, and I should think less than an eighth of a mile off.
14. I heard the pilot, on leaving, give orders to go to leeward of the ship; we were then heading for her.
15. After that the barque fell off; the foretopsail was hooked, and the larboard sheet hauled hard, and the barque was going the course ordered by the pilot; and before the starboard sheet was hauled home we swung to, and continued on our course about two minutes after the pilot left us. I heard the captain say, put the wheel hard astarboard, as he walked aft; the barque didn't mind the helm, and we swung to, and were immediately into the ship.

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16. She did not obey her helm as usual, and must have been dragging on the bottom.

17. The barque lost her jib-boom, bowsprit, and cut-water, and hung to the vessel not over two minutes, but swung round, and the current took her on her larboard quarter and we drifted out stern foremost by the ship's starboard side; we struck the ship in the stern, in the middle of the taffrail, and carried away her boat, taffrail, and round house aft, and cut right into her to within four feet of the water.

18. Less than five minutes.

19. The same time.

20. I observed it when the barque first swung to, about two minutes after the pilot left us, and about the same time before the collision.

21. The helm was ordered hard astarboard, and the foretopsail set, and if she would have minded her helm she would have gone clear, and she did not mind her helm because she dragged in the mud.

22. It could not.

23. There was the general current of the river, and I think it was then running five miles an hour, and it is supposed there is always an under current there which causes the bar to make; I know of no more.

24. Tackles were put on the head stays, the anchors were cleared the first thing, and after drifting sufficiently clear of the ship the anchor was let go.

25. We carried away jib-boom, bowsprit, cut water, head rail, started the top-gallant-forecastle deck, shoved the poll bits aft, and started some of the wood ends and horse pipes, and cut all the rigging forward attached to the jib-boom and bowsprit, and we were obliged to cut every thing attached to the anchor to let it go.

26. The Clarissa was repaired in the points stated above as injured, and her cargo was discharged for the purpose; she went into a dry dock and was caulked outside, and a new breast hook put in to strengthen her bow.

27. I have no personal knowledge by which I can answer this interrogatory.

28. I know nothing more.

A true copy. Attest:

E. BROWN, Jr., *Clerk*.

Examination and answers to the interrogatories appended to the accompanying commission, made by Captain Nehemiah Larrabee under oath.

The answers of the said Larrabee to the several interrogatories appended to the accompanying commission, in their order, are as follows, viz:

1. My name is Nehemiah Larrabee; aged 50 years; place of residence Brunswick, in the county of Cumberland, and State of Maine; and my occupation that of a mariner.

2. So far as being expert I have nothing to say. I have commanded

nine vessels of various kinds. I sailed as master of the ship Arkansas, of Bath, two years and a half, included between 1844 and 1848, having staid at home about one year between voyages, and as master of the barque Russia, of Bath, the year previous; I have also commanded eight brigs, making in all ten vessels, as I should have said, instead of nine. I have been a master mariner twenty-five years, and a seafaring man thirty-two years, commencing in my eighteenth year.

3. I have [been] engaged in the New Orleans, West India, and European trades, and have very frequently voyaged to and from New Orleans; I think I can safely say I have been to New Orleans fifteen times. In former times I used to navigate for myself up and down the river, except that I always employed pilots in crossing the bar; latterly I have been towed by steamboats. I endeavored to possess myself of all the information as to the passes and bars, to be expected of a ship master.

4. From the working of the vessels under my command, I have no doubts but that there are currents and tides which set in different directions; there are more particularly cross currents and under currents about the bars of the Mississippi at its mouth, frequently obstructing or rendering difficult the navigation. Counter currents and under currents always affect the ease with which a vessel under their influence can be steered. They frequently cause vessels to take a sheer and render them, if not ungovernable, at least much less manageable in passing from one current and striking another, or in case of counter currents.

5. The water is perfectly thick and muddy, and furthermore, the currents are not always alike. I think prudence and skill cannot avoid or obviate these liabilities to take a sheer.

6. A vessel under topsails and jib, with a good breeze of eight or ten knots, under the influence of such currents and tideways as are on and about the bars of the Mississippi, I think is as manageable as if under full sail.

7. I always employed a pilot in crossing the bar. I have frequently touched and been grounded on the bar, and also sometimes, both within and without the bar, when I had a pilot. I attributed these obstructions to the existence of hammocks and nubbles. As late as 1847 I was in tow of a steamboat, with a pilot on board of my ship, going in, and struck without the bar upon a hammock or lump, and parted our tow-lines; the ship stopped for a short time. Whenever a vessel is sailing on a wind and takes the ground, she will almost invariably luff and come into the wind. As to the case supposed by the interrogatory, I do not easily perceive how a vessel sailing on the wind can strike a hammock on her weather quarter.

8. Collisions in getting over the bar of the Mississippi are of frequent occurrence; I have often seen vessels coming together. I have more than once seen some three or four vessels together, apparently obstructed by the grounding of the outermost, and the coming up of the others. At one time coming out, towed by a steamboat, I could not avoid

grazing against a vessel so grounded, stripping the blocks from the yards of my vessel, and having to make use of our fenders to save the sides of the ship.

8. (Question objected to.) It is impossible for the best man to avoid such collisions on account of the natural peculiarities of the river, exerting all reasonable care, skill, and prudence. I have known several such cases where vessels have been brought back to New Orleans to be repaired, and have no knowledge of blame being attached to the master or person in charge. Such obstructions in this river are more difficult to be avoided by skilful management, than in most other rivers with like management.

9. I have carefully read the copies of depositions which are appended to the commission, appearing to be depositions of Samuel M. Prince, John Lord, Joseph Melcher, Daniel J. Dunham, and Thomas A. Melcher, and answer the interrogatories relating thereto as follows, viz:

1. I do not conceive there was any apparent danger of collision before the Clarissa luffed.

2. I think there was not time, neither was it advisable under those circumstances to attempt it, for the Clarissa to anchor before the accident occurred, after the Clarissa had been thrown into the wind.

3. I should think a skilful and judicious mariner would not have let the barque drive on the course she was heading, after she luffed, if he could help it. I apprehend that the position of the sails and the other arrangements previously made for the course, according to the pilot's instructions, to the leeward of the Concord, would have rendered the course to windward ineffectual for keeping clear of the Concord. Were I in the captain's place, under the circumstances shown, I should have attempted to go, if possible, to the leeward of the ship.

4. It would have taken no more time to have braced the Clarissa's yards aback, than it would to brace them forward. For the reasons I have before given, I think it would be more prudent under the circumstances to have attempted to go to the leeward by bracing them forward than to brace them aback.

5. (Question objected to.) I have not perceived in the testimony any indications of want of due skill or diligent prudence in the master or mariners of the Clarissa.

6. (Question objected to.) All crowded ports generally are subject to stringent regulations to prevent ships from anchoring and remaining in the channel ways.

7. (Objected to.) Vessels at anchor in frequented channel ways do frequently cause impediments and accidents to navigation, sometimes more and sometimes less, according to circumstances.

8. (Objected to.) The chance of injury I think greater when a vessel is aground in the channel way than when she is at anchor, as the vessel at anchor is more liable to give way to the shock.

9. (Objected to.) The ship Concord, aground as she was, was an obstruction to navigation at that point, and a collision in such case

equally certain, and liable to sustain more damage than if the Concord were afloat.

The answers of the said Larrabee to the several cross interrogatories on the part of the plaintiff are as follows, in the order proposed, viz:

1. I have not any interest in the result of this suit, and am in no way connected with any of the parties thereto.

2. A vessel under topsails and jib, with 7 or 8 knots fair wind, is generally manageable, if free from the bottom or other obstructions.

3. I cannot be more particular as to the number and dates of collisions known by me to have occurred in the Mississippi at its mouth, than I have been in my answer to the eighth direct interrogatory.

4. A vessel coming up with another stationary, and sailing very slowly, is bound to keep a look-out so as to steer clear of that ahead.

5. It may be that the captain of the Clarissa did not notice whether the Concord was aground or not, because the Clarissa was in tow until a very few minutes before the accident. The crew having just started from their anchorage, were probably busy. Of the facts I know nothing.

6. The accident appears to have been unavoidable, and not for want of a look-out, for it appears that the captain was on the look-out.

7. Under existing circumstances, I do not consider that the Clarissa could have gone clear of the Concord to windward if it had been attempted; because, in the first place, she was in the mud unmanageable; and, in the next place, it is safer to go to leeward, it being considered easier and safer for a ship to bear away than to luff.

8. I do not know how far off from the ship the barque might have come to anchor, nor do I know whether she was in readiness to anchor, as it is very seldom a vessel going out attempts a thing of the kind.

9. In the deposition of Capt. Joseph Melcher I find these words: "If I had known that the Concord was aground when I was two miles off, a collision might have been avoided; and in the testimony of Daniel J. Dunham, 2d mate, I find these words, viz.: "If the fact that the Concord was aground had been known early enough for us to have come to an anchor, the collision might have been avoided."

10. I refer to the testimony of the captain and second mate, cited in my former answer.

11. If the man at the helm of the barque did not hear or did not obey the orders of the pilot, I cannot tell what might or might not have happened.

12. At the time of the collision I suppose the Concord to have been outside of the bar, and not in the river. I considered her an obstruction as being in the channel way aground, unmanageable, and it would not be in the power of her crew to assist in avoiding danger. I certainly do not mean to imply that the ship or her hands, or master or other officers, were in any fault. Neither am I to be understood as implying that the barque Clarissa had a right either wilfully or negligently to run into the Concord because she was aground.

NEHE. LARRABEE.

U. S. A., DISTRICT OF MAINE, *ss.*

This seventh day of September, in the year of our Lord one thousand eight hundred and fifty, personally appeared before me, one of the persons authorized by the foregoing commission to take his answers to certain interrogatories thereto attached, Nehemiah Larrabee, of Brunswick, in said district, and he was then carefully examined under oath to testify the truth, the whole truth, and nothing but the truth touching the matters contained in said interrogatories. And when I took the examination as aforesaid, putting the several interrogatories and cross interrogatories in their order, and taking the answer of the deponent to each fully and clearly, the answers were severally as they were made reduced to writing by myself in his presence; and afterwards, all being carefully read over to him by myself, were subscribed and sworn to by him in my presence as and for his deposition.

The said deposition was taken in a place separate and apart, and no person was permitted to be present during such examination except the deponent and myself, or in any wise to communicate with him whilst giving his testimony.

Costs:

Deposition - - -	$3 00
Deponent - - -	1 08
	$4 08

EBEN. EVERETT,
Commissioner.

Examination of Capt. Joseph Badger, and answers made by him under oath to the interrogatories appended to the accompanying commission.

The said Badger answers the said interrogatories in the order in which they are proposed, as follows, viz:

1. My name is Joseph Badger; age fifty-four years; residence Brunswick, State of Maine; and my present occupation that of a merchant and shipowner.

2. I am expert in nautical matters, or ought to be; I have been entrusted with the command of ships for a long time; I have commanded seven or eight ships besides several brigs and schooners; I have sailed as master of ships, and other vessels since 1817 till 1837; I have been a seafaring man or boy 1806 till 1837.

3. I have frequently voyaged to and from New Orleans, and have an intimate knowledge or acquaintance of the Mississippi between that port and the Gulf of Mexico, and its passes and bars in that part of the river.

4. Near and at the mouth of the Mississippi there are many currents and tides which set in different directions; about the bars of the river and at its mouth there are cross currents and under currents, the effect of which is to render navigation difficult, more especially at the mouth

of the river there is very frequently a strong under current. These causes render it difficult to steer vessels under their influence, and cause vessels to take a sheer very much, and to become at times quite unmangeable, when currents are running in different directions and near mud banks.

5. These liabilities cannot at all times be avoided or obviated by prudence or skill. I have been frequently grounded with the best of pilots, from these causes.

6. Even with a fair breeze, I do not consider a barque or vessel, under the circumstances supposed, to be so manageable as she would be under full sail.

7. The mouth of the river and bars are unquestionably full of hammocks and bars, constituting great difficulty in navigation. I consider that these hammocks and mud ways, or nubbles, are liable to make a vessel sheer in either direction, according to the circumstances under which she meets the obstructions. I should think if a ship sailing on the wind with her larboard tacks on board should strike such on her larboard quarter, the tendency would be to throw her up on the wind, but how much would depend on the currents.

8. (Question objected to.) Collisions in getting over the bar at the mouth of the river are of frequent occurrence. Blame is not apt to be imputed even to experienced navigators, when such collisions happen there. The frequency of these obstructions, and the strength and variety of the currents, render care, skill, and prudence, however properly exerted, much less successful here than they usually are elsewhere.

9. I have carefully read the copies of depositions which are appended to the commission, purporting to be copies of depositions of Samuel M. Prince, John Lord, Joseph Melcher, Daniel J. Dunham, and Thomas A. Melcher, and answer the interrogatories, specially relating thereto, as follows, viz:

1. On the supposition that the ship was aground I think there was danger before the Clarissa luffed; but if the ship was not understood to be aground, the danger was not apparent.

2. I think the Clarissa could not have anchored after she was thrown into the wind, and before the collision. It is always dangerous attempting to anchor when vessels are so near a collision.

3. I see not enough in the facts stated in the depositions to determine that it would be unskilful conduct in the master, either to continue the direction given by *by* the luffing of the Clarissa, or to put the sails aback, because I consider the barque so near the bottom as to be unmanageable. Neither should I think the master unskilful (if he thought there was water enough) to attempt going to the leeward of the ship.

4. I do not conceive there was time sufficient, according to the testimony referred to, for the Clarissa to have braced her yards aback. I think it was better seamanship in the case to brace the yards of the Clarissa up, than to brace them aback.

5. (Question objected to.) I do not perceive from the testimony, any act done by the master and mariners of the Clarissa indicating a want of due skill or diligent prudence on their part.

6. (Objected to.) As a general thing, it is unsafe for vessels to come to anchor in channel ways used in navigation, for fear of collision; and in crowded ports stringent regulations are usually made for the security of the shipping. At the mouth of the Mississippi going in and out over the bar pilots, if they can avoid it, do not attempt to come to anchor.

7. (Objected to.) It is a cause of great danger, and impediment to navigation, and of accidents, for vessels to anchor in the usual channel ways leading between great ports and the ocean.

8. (Objected to.) I think more impediments and dangers to navigation are created by a large ship getting aground in the channel over a bar, than if she had anchored in the same position. The ship at anchor might have a chance to sheer one way or the other, and the reaction from the collision would be less if the vessel were afloat.

9. (Objected to.) In the case put in the interrogatory, as the Concord was aground, I consider the collision as certain as if she had been afloat, and more dangerous.

The answers of Captain Joseph Badger, under oath, to the cross interrogatories put on the part of the plaintiff in the order proposed, are as follows, viz:

1. I am not interested any way in the result of this suit, nor am I connected with any of the parties thereto.

2. A vessel under topsail and jib is not so manageable in any state of the wind as when under full sail. In case of currents, and near the bottom, they are apt to become unmanageable, more so than if under full sail.

3. Cases of collision, at or near the mouth of the Mississippi, have been very frequent. I do not recollect any instance, under my observation, involving very bad consequences, and am unable to say how many I have actually seen, nor the times when.

4. A vessel coming up with another, sailing very slowly or stationary, is bound to beep a look-out, so as to steer clear of the ship ahead.

5. I account for its not being known on board the Clarissa that the ship was aground, from the fact that the ship was under full sail, standing the same way, and the Clarissa presuming the ship to be over the bar; and the pilot also leaving orders to steer after the ship, or two points to the leeward.

6. I see no ground to impute a want of a look-out, or that it was done negligently.

7. I see no reason to infer that the Clarissa was sailing on a course unsafe to the Concord until she swung to windward. I cannot judge as well as if I had been a spectator; but, from the testimony, I believe she was conforming to the pilot's direction.

8. In that current I should think the barque should be at least half a mile distant from the Concord to justify her commencing to anchor in a fair wind.

9. I find that the captain and second mate of the Clarissa have given opinions to the effect that the collision might have been avoided had they known the Concord to be aground in season.

10. The collision might not have taken place, had the situation of the ship been known in season by the Clarissa for her to come to anchor.

11. I think the captain would have perceived it, if the man at the helm of the barque had deviated from the orders given by the pilot to any extent.

12. I presume the ship, when she got aground, was over the bar on one of the mud banks. She was more of an obstruction there than she would be if afloat and at anchor, or under sail, for reasons I have given before. I do not mean to imply any such thing as that the ship was in fault, or that the Clarissa had a right to run into her because she was aground.

JOSEPH BADGER.

U. S. A., DISTRICT OF MAINE, *ss.*

This ninth day of September, in the year of our Lord one thousand eight hundred and fifty, personally appeared before me, one of the persons authorized by the foregoing commission to take his answers to certain interrogatories thereto attached, Joseph Badger, of Brunswick, in said district; and he was then carefully examined under oath to testify the truth, the whole truth, and nothing but the truth, touching the matters contained in the said interrogatories; and when I took the examination as aforesaid, putting the several interrogatories and cross interrogatories in their order, and taking the deponent's answer to each fully and clearly, the answers were severally, as they were made, reduced to writing by myself in his presence; and afterwards, all being carefully read over to him by myself, were subscribed and sworn to by him in my presence as and for his deposition.

The said deposition was taken in a place separate and apart, and no person was permitted to be present during such examination except the deponent and myself, or in any wise to communicate with him whilst giving his testimony.

EBEN EVERETT, *Commissioner.*

Costs—deposition, $3 00
Deponent, 1 08
—— $4 08

Examination of Captain Richard McManus, and answers made by him under oath to the interrogatories appended to the accompanying commission.

The said McManus answers the said interrogatories in the order in which they are proposed as follows, viz:

1. My name is Richard McManus; aged fifty-four years; place of

residence Brunswick, in the State of Maine, and my occupation that of a master mariner.

2. As to whether I am expert in nautical matters, I should say, yes; I have been entrusted with the command of ships and brigs ever since 1823; as near as I can recollect I commanded the ship Globe, of Philadelphia, in 1831 and 1832; brig Erie, of Philadelphia; brig Delight, of Philadelphia; brig Atakapas, of Philadelphia; and the brig William Osborne, of Portland; and the brig Cervantes, of New York, afterwards and before 1841; from 1841 to 1846 I was in command of the ship Brunswick, for as many as eight or ten voyages, from Mobile or New Orleans to Europe; in 1846 I commanded the ship Monterey one voyage to and from Mobile; two to and from New Orleans; and two from New York; I have been a seafaring man ever since I was nineteen years old, and am now bound for a southern voyage in the ship Austria, of Damariscotta.

3. I have been to New Orleans as master more than twenty-five times; I profess to have a good knowledge of, and acquaintance with, the river Mississippi, and its passes and bars between New Orleans and the Gulf of Mexico.

4. There are currents and cross tides on and near the bar, and at the mouth of the Mississippi; as far as my experience goes I have always found it so; I always consider cross tides and eddyings dangerous to navigation, and as far as my experience goes, ships will not steer or answer their helm in such tides; about the mouth of the river I have frequently found ships and other vessels to take a sheer and become ungovernable; I have known this caused both by cross currents and by the vessel's taking the bottom.

5. You can neither go in nor out at the mouth of the river without being greatly exposed to these liabilities, even with good pilots; when within the influence of these tides and currents, prudence and skill are but of very little effect; the vessel will go about as she may be affected by the tides and wind.

6. Under the circumstances, with a fair wind, I consider a ship or barque in crossing the bar to be as manageable with topsails and jib as if she had more canvass; I as a general thing, in crossing the bar, have made use of the topsails and jib only, if the wind was fair; I have more than once touched the bottom in crossing, and had the ship yaw six or eight points to windward; in case the ship touches and brings up, I pack on all sale to force her over the bar, but not otherwise.

7. There are on the bar and about the mouth of the Mississippi many hammocks, mud banks, or nubbles, causing much difficulty, sometimes coming up in a night, as I have seen them, under a ship's lee when aground on the bar; if it can happen that a ship sailing on the wind with her larboard tacks on board should strike such hammock or nubble on her larboard quarter, I think the tendency would be to throw her on the wind.

8. (Question objected to.) Collisions in getting over the bar of the Mississippi are of frequent occurrence with the most skilful pilots and

masters; they are not generally supposed to be the result of fault, or blamed; I did in crossing the Mississippi bar come in contact with the ship Lawrence when I was in the William Osborne; the Lawrence was aground on the bar with all sail, or rather on a knoll; I did not perceive she was aground till I got close on board; the William Osborne was dragging the bottom all the way, and the current strong; just as we were within 200 yards of the Lawrence, or about that distance, we took a nubble and the vessel luffed direct for the Lawrence, but when within about 50 feet of the Lawrence another nubble took the William Osborne in a different direction, so that we grazed and carried away the Lawrence's ship channels only; within about two years I was on board the ship Austria on the bar, though not then in command of her, but a part owner; a like collision happened by her being run afoul of by a British ship, both vessels having taken the ground and yawed; the damage of the Austria was about three hundred dollars; the English ship, the name of which I never knew, put back again to New Orleans for repairs; no blame was seriously imputed by either party to the other in either instance; care, skill, and prudence are much less available here, and less successful in avoiding danger, than they usually are elsewhere; in my opinion the only way to avoid collisions is to go to sea, one vessel at a time, and this I deem to be very seldom practicable.

9. I have fully and carefully read the copies of the depositions appended to the commission, viz., of Samuel M. Prince, John Lord, Joseph Melcher, Daniel J. Dunham, and Thomas A. Melcher, and proceed to answer the interrogatories relative thereto in due order as follows, viz:

1. I do not conceive that there was any apparent danger of collision between the Clarissa and Concord, until the Clarissa luffed or was thrown into the wind.

2. I do not think the Clarissa could have anchored after she was thrown into the wind, and before the collision, without increasing the danger.

3. In strong currents it is very dangerous to attempt to go to windward of a ship, especially with the wind and tide both setting one way; in the predicament of these vessels I think it would have been unskilful in the master of the Clarissa to attempt to go to the windward if he could help it.

4. According to my views I do not think there was time to clear the ship in any mode according to the testimony; the consequence of laying the yards aback would have been to let the barque drift into the ship, and in my judgment would have been bad management.

5. (Question objected to.) I do not perceive from the testimony any act done by the master and mariners of the Clarissa which indicates a want of due skill or diligent prudence; there was not time for any considerate action after the Clarissa perceived that the Concord was aground.

6. (Objected to.) In most crowded ports, harbors, rivers, and channel ways, regulations of the kind suggested by this question I presume

exist; I, however, know of no express regulations adapted to the mouth of the Mississippi, except rules and practice of maritime law.

7. (Objected to.) It is dangerous to anchor in the usual channel ways leading between great ports and the ocean; the greatness of the danger depends upon circumstances; I have never known vessels outward bound from the Mississippi to come to anchor till entirely clear of the bar.

8. (Objected to.) The chance of collision is about equal by a large ship getting aground in the channel over a bar, as if she had anchored, except from the exertions of the people on board the vessel at anchor to veer chain or sheer the ship.

9. (Objected to.) Ship Concord being aground and all sail set, would lead a ship astern to believe that she was all clear and over the bar. If she had had her sails clewed up it would have given warning that she was aground, and in that case the danger would have been less. Had she been afloat, I presume she would have gone clear.

The answers of Captain Richard McManus under oath to the cross interrogatories put on the part of the libellants, in the order proposed, are as follows, viz :

Answer 1. I have no interest in the result of this suit, nor am I in any way connected with the parties.

2. A vessel under her topsails and jib, with seven or eight knot fair wind, is generally manageable.

3. The two cases I have mentioned in my eighth answer more nearly concerned myself. Other cases of vessels on the bar afoul of each other, were matters of almost daily occurrence, and I had no particular occasion to remember the names nor dates when.

4. A vessel coming up with another stationary or sailing slowly is bound to keep a look-out, so as, if practicable, to steer clear of the ship ahead.

5. In the case supposed by the interrogatory, I should account for the fact, that it was not known on board the Clarissa sooner that the Concord was aground, from the circumstance that the Concord had all sail set, and had the appearance of heading away from the Clarissa; the Concord also being outside the bar, and the pilot having given the course to the Clarissa.

6. I account for it by the Clarissa touching the bottom and not steering.

7. In my judgment, it is possible that the Clarissa might have cleared the ship by keeping on to windward, but I should not have thought it prudent to have done so, but would have gone to leeward, on account of the strong tide and wind acting in the same direction.

8. It would not have been prudent in the Clarissa to attempt to anchor within the distance of half or three-quarters of a mile from the ship, because she could not have brought up before getting afoul of the ship.

9. I believe the master and second mate of the Clarissa have stated,

that if those on board the barque had known in season that the ship was aground, the collision might have been avoided.

10. If it had been known before the pilot left the barque that the Concord was aground, in my opinion the accident would have been avoided.

11. I believe the man at the helm of the barque did hear and attempt to obey the pilot's instructions. If he had not, I cannot tell where the barque might *might* have drifted or have been steered.

12. I believe the Concord at the time of the collision to have been out of the river and on one of the knolls. She was under sail, and as I suppose did not appear to be aground to those on board the barque till too late; in consequence of which the barque may have been mislead. If the ship had been sailing it would have taken more time for the barque to come up with her after the pilot left, and afforded more time to avoid the collision. I do not mean to imply that blame attaches to the Concord, neither that the Clarissa had a right purposely to run into her, because she was aground.

RICHARD McMANUS.

UNITED STATES OF AMERICA,
District of Maine, ss.

On this tenth day of September, in the year of our Lord one thousand eight hundred and fifty, personally appeared before me, one of the persons authorized by the foregoing commission, to take his answers to certain interrogatories thereto attached, Richard McManus, of Brunswick, in the said district, and he was carefully examined under oath to testify the truth, the whole truth, and nothing but the truth, touching the matters contained in the said interrogatories; and when I took the examination as aforesaid, putting the several interrogatories and cross interrogatories in their order, and taking the answer of the deponent to each fully and clearly, the answers were severally, as they were made, reduced to writing by myself in his presence, and afterwards all being carefully read over to him by myself, were subscribed and sworn to by him before me as and for his deposition.

The said deposition was taken in a place separate and apart, and no person was permitted to be present during the examination except the deponent and myself, or to communicate with him in any wise whilst giving his testimony.

EBEN EVERETT, *Commissioner.*

Costs—Deposition - -	$3 00
Deponent - -	1 08
	$4 08

Examination of Captain Clement Martin, and his answers under oath to the interrogatories appended to the accompanying commission.

The said Martin answers the said interrogatories in the order in which they are proposed, as follows, viz :

1. My name is Clement Martin; I reside in Brunswick, in the State of Maine; my age is sixty years, and my occupation at this time that of a merchant and shipowner.

2. I presume I am expert in nautical matters, and know nothing to the contrary but that I am. I have endeavored to be so. I took command of the barque Clement in 1833, and commanded her three years. I took command of the ship Jacob Pennell in 1836, and remained in command of her till 1841, except a six months' voyage to Europe, when my son took command. I have not been to sea since 1841. I commenced a seafaring life at the age of sixteen years, and continued to make that my only business till 1841. In 1811, at the age of 21, I became master of the brig Prospect until interrupted by the war. Previously to taking the ship Clement, I had also commanded the following brigs, viz., the Two Sisters, Visitor, Huron, Transit, Maine, Abigail, Mentor, and Amazon.

3. I have voyaged to New Orleans at different periods, as many as fifteen or twenty times. I was last in New Orleans in 1841. Up to that time, I had made all due exertions to acquaint myself with the river Mississippi and its passes and bars between New Orleans and the Gulf of Mexico. I considered myself well acquainted.

4. About the bars of the Mississippi and at its mouth there are more currents and tides setting in different directions, and cross currents and under currents, than in any other river I have ever known. The effect of these currents is to render navigation much more difficult, rendering vessels harder to steer when under their influence ; and sometimes causes them to sheer and become ungovernable, even with a breeze of 5 or 6 knots, and in a good depth of water and outside the bar.

5. These difficulties cannot be avoided, nor obviated by prudence or skill in the master; the current takes command.

6. With an eight knot breeze, I think a ship sailing under topsails and jib more manageable than if under full sail; the sails may be handled quicker, and the vessel more easily checked.

7. I have experienced the effects of hammocks and nubbles on and about the bar, and have often heard pilots on board my vessels complain of their frequency. The striking of a nubble on the larboard quarter by a vessel sailing on the wind with her larboard tacks on board would appear to me improbable; but should such an accident occur, I think the vessel would swing or sheer in the direction of the current.

8. (Objected to.) Collisions in getting over the bar of this river are of frequent occurrences. Such collisions are frequent with good pilots, and are not generally considered evidence of want of skill or care. Care, skill, and prudence are not so successful when properly exerted

to avoid such dangers, as they are elsewhere. In April, 1835, I was master of the barque Clement, from Boston to New Orleans, with a pilot outside of the bar, with a strong southerly wind, proceeding to pass the bars with all sails up. There was a large English ship on the bar aground. The pilot ordered the course to the eastward of the ship. After passing the ship one or two hundred yards, the Clement took the ground, and immediately swung to the westward, and drifted on to the English ship doing considerable damage. The pilot said the accident was unavoidable. In March, 1837, I was master of the ship Jacob Pennell, from New Orleans from Liverpool; was in tow of a steamboat; in passing through the SW. pass, wind strong from NNW., one half mile inside of the bar, a ship inward bound lay at anchor in mid channel; the pilot ordered the steamer to pass to the westward of the ship at anchor; the steamer went to the westward, but the ship Jacob Pennell went into the starboard bow doing great damage to the ship at anchor, and some say about 120 dollars to the Jacob Pennell. In both cases the parties on each side considered the accident unavoidable, and no damages ever claimed.

9. I have examined fully and carefully the depositions annexed to the commission and interrogatories, viz., those of Samuel M. Prince, John Lord, Joseph Melcher, Daniel J. Dunham, and Thomas A. Melcher, and make answer to the interrogatories, specially relating thereto, as follows, viz:

1. I do not conceive that there was any apparent danger of collision before the Clarissa luffed, or was thrown into the wind.

2. In my opinion, after the Clarissa was so thrown into the wind, she could not have anchored before the collision occurred. I never knew on any bar an anchor to be dropped when the vessel was on the bottom. One great reason is, the vessel might drift upon it and make a hole in her bottom. I think there was not time for the Clarissa to come to anchor.

3. I think it would have been unsafe and improper in the master of the bark to attempt to go to windward of the ship until he could have perfect command of his helm. In his case I should have felt it my duty to go to the leeward of the ship, if possible.

4. I think there would not have been time for the Clarissa to have braced her yards aback after she was luffed; neither would that have been the most prudent course. I should certainly have attempted to go to the leeward of the ship.

5. (Question objected to.) I do not perceive from the testimony any act done by the master and mariners of the Clarissa indicating a want of due skill or diligent prudence.

6. (Objected to.) Almost all ports are under regulations more or less stringent in regard to the anchoring of vessels in their channel ways, to keep the thoroughfare clear. After a vessel leaves the port, I think special regulations affecting anchoring in the channel of the river are not usual; such cases are left for the application of general principles and usage.

7. (Objected to.) It is a great danger and impediment to navigation, and a cause of accidents, for vessels to anchor in the usual channel ways leading between great ports and the ocean.

8. (Objected to.) A ship at anchor is always heading the wind or current, and her situation is easily perceived. If aground with her sails set, another vessel astern would have no warning of the difficulty until on near approach.

9. (Objected to.) I think the position of the Concord, supposed by the interrogatory, was an obstruction to navigation; the collision would have been less likely to happen if the Concord had been afloat.

The answers of Capt. Clement Martin under oath to the cross interrogatories put on the part of the libellants, are in the order in which the questions are proposed, as follows, viz:

1. I have no interest in the result of the suit, and am not in any manner connected with any of the parties.

2. A vessel under her topsails and jib, with 7 or 8 knot fair wind, is generally manageable. I wish to be understood that she must be clear of the bottom, with water enough.

3. I have specified two instances of collision where I was concerned in the southwest pass. I met with another in the southeast pass in 1838, where both ships were considerably injured. Those were all the collisions I have witnessed. Other cases I have frequently heard of at New Orleans, but made no record, and do not remember the names nor dates.

4. A vessel coming up with another aground, or moving slowly, is bound to look out in order to steer clear of the latter.

5. I account for its not being known on board the Clarissa that the Concord was aground by the Concord's having all sails set, and it not appearing that she made any signals to intimate that she was aground.

6. I cannot make out that there was not a look-out on board the Clarissa, and all means used which the case required in so unexpected an emergency.

7. I think the barque could not have gone to windward of the ship in the case supposed, because not minding her helm the barque would drift, and probably not clear the ship.

8. I should want at least one mile's distance from the ship in order to justify me in anchoring, if I had the control of the barque.

9. I understand the captain and second mate so to say.

10. Had the fact of the ship being [a]ground been known aboard the barque ten or fifteen minutes sooner, I think the collision might have been avoided.

11. If the man at the helm had not heard or had disregarded the order of the pilot, I cannot judge what direction he might have given the bark.

12. I understand or suppose the ship to have been just on the outside of the bar. I suppose there was channel way enough for the bark to pass the ship, had it been known on board the bark that the ship was aground, before the bark became unmanageable. If the ship

had been sailing she would have got away from the barque after she luffed. The ship also, in such a case, might have helped to clear herself, which she could not do when aground. I do not in my testimony mean to imply that the Concord was in fault; neither do I mean to imply that the Clarissa had a right to run into her if she could have avoided it, because she was aground.

C. MARTIN.

U. S. A., DISTRICT OF AMERICA, *ss.*

On this eleventh day of September, in the year of our Lord one thousand eight hundred and fifty, personally appeared before me, one of the persons authorized by the foregoing commission to take his answers to certain interrogatories thereto attached, Clement Martin, of the district aforesaid; and he was then carefully examined under oath to testify the truth, the whole truth, and nothing but the truth touching the matters contained in said interrogatories; and when I took the examination as aforesaid, putting the several interrogatories and cross interrogatories in their order, and taken the answer of the deponent to each fully and clearly, the answers were severally as they were made reduced to writing by myself in his presence, and afterwards all being carefully read over to him by myself, were subscribed and sworn to by him in my presence as and for his deposition.

The said deposition was taken in a place separate and apart, and no person was permitted to be present during the examination except the deponent and myself, or to communicate with him in any wise whilst giving his testimony.

EBEN. EVERETT,
Commissioner.

Costs—Deposition - - - -	$3 00
Deponent - - - -	1 08
	$4 08

Examination of Capt. John Patten and his answers under oath to the interrogatories appended to the accompanying commission.

The said Patten answers the said interrogatories in the order in which they are proposed, as follows, viz:

1. My name is John Patten, my age sixty-one years; I reside in Bath, State of Maine, and my occupation merchant and shipowner, previously shipmaster.

2. I leave others to judge of this; I might have been so considered expert once; I never met with any accident of any importance; about ten years I have been master of different ships, beginning about the year 1823; I had before that been master of brigs and barques about 8 years; I first went to sea about the year 1809; I was 20 years old my first voyage before the mast; though not master since about 1833, I

have been twice to New Orleans, once about ten years ago as a passenger in a New York packet, and about five years ago as a passenger in a ship, partly owned by myself, my brother owning the other part.

3. I was amongst the first that navigated to New Orleans from the Kennebec river, which was in the year 1818 or 1819; I pursued that trade till I quit going to sea as master, averaging nearly or quite two trips a year during that period.

4. Whilst I was master as before stated I considered myself well acquainted with the river Mississippi and its passes and bars between New Orleans and the Gulf of Mexico; I used at first to go in and out at the southeast pass; for several years that was the main pass; this pass by degrees filling up, has since occasioned vessels going out and in at the southwest pass; this I think was about 1827, and near the time that steamers began to tow vessels up and down in the river; since that time I used the southwest pass.

4. The surface of the water above and about the bar of the river in general runs pretty true and clear of cross currents, though there are frequent under currents near the bottom; when over the bar going out there are frequent cross tides and currents on the surface, and under currents are nearer the surface; ships running near the bottom steer very badly, after taking rank sheers; if they touch the bottom they sometimes run in the mud a considerable distance before they mind the helm at all.

5. The most experienced are liable to meet with accidents from those causes; skill and discretion have less effect here than in most rivers.

6. Vessels under but little sail as topsails and jibs with a 7 or 8 knot breeze, and sails properly trimmed, I consider as manageable there, as if under full sail in like circumstances.

7. There are many hammocks and nubbles on and about the bar constituting difficulties in navigating, frequently shifting and appearing in different places at short periods; I have often known vessels which had run into such, after having lain so for some time, get clear of them again by the natural action of the current; it is more likely that a vessel sailing on the wind with her larboard tacks on board would strike such hammock on her starboard quarter; if she should strike on her larboard quarter, and no current counteracting, I think she would come into the wind; if there be a current with the wind the vessel would I think fall off.

8. (Objected to.) Collisions in crossing over the bar are of frequent occurrence; such accidents are unavoidable by the most experienced when the vessel touches the bottom; and independent of circumstances showing positive neglect or wilfulness in the management, they are not deemed blameworthy; such accidents are more difficult to be avoided there than elsewhere.

9. I have attentively heard read by the commissioner, and have carefully examined, the deposition appended to the commission, not however agreeing in all respects with the names of witnesses enumerated in this interrogatory; those annexed are the depositions of Samuel M.

Prince, John Lord, Joseph Melcher, Daniel J. Dunham, and Thomas A. Melcher; and I proceed to answer the interrogatories relating thereto in their order, viz:

1. I think there was no danger of collision before the Clarissa luffed.

2. I think that after the Clarissa was thrown into the wind she could not have anchored safely before the collision; if the vessel touching the bottom was the cause of her luffing, and she should attempt to anchor, the vessel would shoot ahead directly upon the anchor, and probably make a hole in her bottom.

3. Under the circumstances of the wind and current, and having so little time, I think she could not have gone to the windward so as to avoid the collision; I think I should have kept my helm hard up, and braced my head yards back, and attempt to go to leeward.

4. I think the Clarissa was too near the ship to avoid a collision; possibly by setting the yards aback she might have eased it some.

5. (Question objected to.) I do not perceive any act done or omitted by the master and mariners of the Clarissa which indicates a want of due skill or prudence; as to putting the yards aback or bracing them up, I conceive that good seamen might differ, as it would take longer to brace the yards aback.

6. (Objected to.) There are generally regulations restraining vessels from lying at anchor in channel ways and exposed places, in crowded ports, over a certain fixed time; above and below the shipping in the river Mississippi or elsewhere, there are not any regulations that I know of.

7. (Objected to.) Vessels must anchor when the wind fails or is strong ahead, in channels or elsewhere; they are more or less in the way of other vessels, but it cannot be prevented.

8. (Objected to.) I think a vessel aground in the situation described in the question much more liable to a collision than if at anchor; if at anchor she might pay away chain, or sheer with the helm, and avoid collision.

9. (Objected to.) I consider that the collision would have been less likely to have occurred if the Concord had been afloat.

The answers of Captain John Patten, under oath, to the cross interrogatories put on the part of the libellants in the order proposed, are as follows, viz:

Answer 1. I am not interested in the result of the suit, and am in no wise related or connected with either of the parties.

2. A vessel under her topsails and jib, with 7 or 8 knots fair wind, is generally manageable.

3. I used frequently, and nearly every time, to take the bottom in passing in and out; more frequently going out, because with a heavier draft of water. I never had a collision with another vessel, but in one instance I barely escaped being run into. The frequency of such accidents there is matter of notoriety.

4. A vessel coming up with another stationary, or sailing very slowly, is bound to keep a look-out to steer clear of the ship ahead. She should do so, of course, for her own security; and it belongs to her, from her position, to steer clear of the vessel ahead if possible.

5. It is difficult for me to account for its not being known at an earlier moment on board the Clarissa that the Concord was aground. The sails being set, and the ship heading from the bark, might deceive those on board the Clarissa, probably employed till the pilot left them in preparing for sea, and the ship was clear of the bar.

6. I see no special reasons, except those I have mentioned, though others may have existed.

7. I think the course the Clarissa was on before she luffed would have carried her clear of the ship. After she luffed, I think she would not have cleared the ship, even if she had not attempted to bear away. The natural direction for a practical ship master to give when the barque luffed, would have been to put her helm hard up.

8. Then I should not think it safe to go to anchor at all. If the water was deep enough, I should think sixty rods at least should be required, distance from the ship.

9. The captain and second mate stated something to that effect.

10. I think it likely that the accident might have been prevented, if the fact of the ship being aground had been known earlier, and the barque could have been steered.

11. If he did not hear, I do not know what course he might have steered; neither if he did not obey.

12. She was outside of the bar, which I consider as being out of the river. If she had been afloat, under sail, she would have kept out of the way. It appears to be no fault of the ship that she was aground, and I do not think the Clarissa had a right to run into her if she could help it.

JOHN PATTEN.

UNITED STATES [OF] AMERICA,
District of Maine, ss.

On this thirteenth day of September, in the year of our Lord one thousand eight hundred and fifty, personally appeared before me, one of the persons authorized by the foregoing commission to take his answers to certain interrogatories thereto attached, John Patten, of Bath, in said district, and he was carefully examined, under oath, to testify the whole truth, and nothing but the truth, touching the matters contained in said interrogatories; and when I took the examination as aforesaid, putting the several interrogatories and cross interrogatories in their order, and taking the answer of the deponent to each fully and clearly, the answers were severally, as they were made, reduced to writing by myself in his presence; and afterwards, all being carefully read over to him by myself, were subscribed and sworn to in my presence, as and for his deposition.

The said deposition was taken in a place separate and apart, and no person was permitted to be present during the examination except the deponent and myself, or in any wise to communicate with him whilst giving his testimony.

EBEN. EVERETT, *Comm'r.*

Costs.—Deposition - - -	$3 00	
Comm'rs travel from Brunswick to Bath - -	1 00	
		$4 00
Deponent - - - - -		1 08
		$5 08

Examination of Captain Samuel Swanton, and his answers under oath, to the several interrogatories appended to the accompanying commission.

The said Swanton answers the said interrogatories in the order in which they are proposed, as follows, viz:

1. My name is Samuel Swanton; my age sixty years; my residence Bath, in the State of Maine; and at present I am inspector, weigher, and gauger, in the custom-house at Bath.

2. I have had the reputation of being expert in nautical matters. I first went to sea in 1807, at the age of about 17 years, before the mast. In 1813, having previously been mate, I became master of the Huron, a brig; afterwards I commanded another brig about four years; after that I was entrusted with the ship Juliet. I have commanded brigs and ships ever since, with brief interruptions. The last fifteen years I have been constant in two ships, the ship New England and the ship United States; the former for seven years, and the latter for eight years.

3. I have frequently voyaged to and from New Orleans, and for the last fifteen years that I sailed I was constantly in that trade—that and Europe—averaging as much as twice a year to New Orleans during that time. I am well acquainted with the river Mississippi, and its passes and bars, between New Orleans and the Gulf of Mexico. I always employed a pilot over the bar, coming down and going in.

4. The river Mississippi is noted for its currents and tides in different directions, and under currents, from the outside of the bar over the bar, and to the head of the southwest pass, being 18 miles or more, rendering navigation more or less difficult and more precaution necessary, frequently affecting the steering of vessels on the bar; and when the ship runs near the bottom, they often cause a vessel to take a sheer, so that it becomes unmanageable.

5. Prudence, and skill, and experience, I deem of use in avoiding and obviating those difficulties, but they are frequently unavoidable without a steamboat.

6. I suppose a barque or vessel under jib and topsails, with a breeze

of six or eight knots an hour going down in such currents and tide-ways, if she had water enough to clear her from the bottom, would be as manageable as if under full sail.

7. There are many hammocks and nubbles on and about the bar, in the way of getting out and in with vessels. In the case supposed in the question, if the ship should strike a nubble on her larboard quarter, I conceive the tendency would be to throw her up in the wind, unless counteracted by the currents.

8. (Objected to.) Collisions, in getting over the bar of this river, are of frequent occurrence; I have seen a great many collisions there of vessels, but never knew of any attributed or attributable to fault; there may have been blame cast in some such cases, but I have never heard of any such. With all the precautions you take, I think the dangers here are more inevitable than at any other place I was ever at.

9. I have heard the depositions appended to the commission read by the commissioner, and attended carefully to the contents, and am ready to answer the several interrogatories relating thereto, as follows, viz:

1. I conceive there was no apparent danger of a collision before the Clarissa was thrown into the wind.

2. I should rather have taken the risk of a collision than to have let go an anchor, as the barque was dragging the bottom, and the anchor might go through her bottom; I have never heard of an anchor being let down in such case of a vessel going down.

3. I should; if, having command of the Clarissa, after she luffed, have first attempted to fall off and direct her course to the leeward of the ship; after that failed, I would have tried to trim my sails and go to the windward, if there had been time and water enough, but I think there were not.

4. I think there was not time enough to have braced the yards aback after the Clarissa luffed, and before the collision took place; if the sails could have been braced aback, the collision, I think, could not have been avoided, though the force of it might have been diminished.

5. (Question objected to.) I do not infer from the testimony any act done by the master and mariners of the Clarissa which indicates a want of due skill or diligent prudence; the master of the barque had a right to believe, when the steamboat and pilot left the ship, that the ship was over the bar and in deep water; as it is customary for the steamer to try the ship from one to three hours after stopping to get her off, if aground, and four times out of five they succeed.

6. (Objected to.) I never heard of any regulations of the kind supposed near the bar and mouth of the Mississippi; such regulations are used in crowded ports.

7. (Objected to.) In the case supposed vessels so anchored are impediments and causes of accidents more or less, according to their situation and the circumstances.

8. (Objected to.) Vessels aground are greater obstacles and causes of danger than if at anchor; because, if they are at anchor and afloat, they can be sheered either by wind or current.

9. (Objected to.) I think the ship Concord bedded in the mud with her sails all trimmed and drawing, was an obstruction to navigation at that point; if the Concord had been afloat, at anchor, or making headway, the collision would not have been so certain to have occurred.

The answers of Captain Samuel Swanton, under oath, to the cross interrogatories propounded on the part of the libellants, in the order proposed, are as follows, viz:

1. I am neither interested in the suit, nor am I acquainted with any one of the parties, or connected with any.

2. A vessel under her topsails and jib, with 7 or 8 knot fair wind, is generally manageable with sufficient water.

3. The frequency of such accidents at the bar and mouth of the river is, at New Orleans and at places trading with that port, a matter of notoriety; I have myself, going in and out, seen at different times a dozen or more collisions; I had no interest in the vessels, and did not know the names; I have known vessels in New Orleans undergoing repairs at other times in consequence, as was then said, of injuries from such collisions.

4. A vessel coming up with another stationary, or sailing very slow, is bound to keep a look-out so as to steer clear of the ship ahead.

5. There may have been circumstances in the case not known to me, but I can conceive that the master of the Clarissa might have supposed the Concord to be moving slowly through the mud.

6. I do not infer that there was negligence on board the Clarissa in the look-out, nor that there was no look-out on board, as the barque was heading clear of the ship till within a short distance, when she luffed.

7. In the case supposed in the seventh interrogatory I think the Clarissa would not have gone clear to the windward of the ship, because the rudder had ceased to act on the vessel.

8. If there had been water enough for the barque to clear the anchor, and the anchor all in readiness, I suppose she might have anchored if she had dropped her anchor at the distance of forty rods, and not a less distance.

9. The master and second mate do say something to that effect in their answers to the 17th cross interrogatory.

10. I think the collision might have been avoided if the bark had had twenty minutes' notice that the ship was aground, and I hardly think it could have been done in less time.

11. If the man at the helm had neglected to comply with the pilot's instruction, it might have caused the collision.

12. I suppose she, the Concord, was not in fact clear of the bar, and that the fact of her being aground shows it. There are several channels over the bar and among the mud banks on the outer edge of it; the one I know, which has the deepest water, and is not generally used for large vessels, I should think not more than 5 or 6 rods wide in places. Being aground, I think the Concord was more of an obstruction than if

at anchor or going ahead. I do not mean to imply that the ship was in fault, nor that the barque had a right to run into her because she was aground.

SAM'L SWANTON.

U. S. A., DISTRICT OF MAINE, *ss.*

On this thirteenth day of September, in the year of our Lord one thousand eight hundred and fifty, personally appeared before me, one of the persons authorized by the foregoing commission to take his answers to certain interrogatories thereto attached, Samuel Swanton, of Bath, in the said district; and he was then carefully examined under oath to testify the truth, the whole truth, and nothing but the truth, touching the matters contained in the said interrogatories; and when I took the examination as aforesaid, putting the several interrogatories and cross interrogatories in their order, and taking the answers of the deponent to each fully and clearly, the answers were severally, as they were made, reduced to writing by myself in his presence; and afterwards, all being carefully read over to him by myself, were subscribed and sworn to by him before me as and for his deposition.

The said deposition was taken in a place separate and apart, and no person was permitted to be present during the examination except the deponent and myself, or to communicate with him in any wise whilst giving his testimony.

EBEN. EVERETT, *Commissioner.*

Costs, deposition - - - -	$3 00	
Comm'rs travel to Bath, Brunswick -	1 00	
	——	4 00
Deponent - - - -		1 08
		$5 08

Examination of Capt. Isaac Merritt, and his answers, under oath, to the several interrogatories appended to the accompanying commission.

The said Merritt answers the said interrogatories in the order in which they are proposed, as follows, viz:

1. My name is Isaac Merritt; my age is thirty-eight years; my residence is at Bath, (Maine;) and my occupation that of a master mariner.

2. I consider myself competent for the business I follow; I have been successful; underwriters have never been called upon to pay a cent on account of any vessel commanded by me; I have been a seafaring man on foreign voyages since the age of twenty years, and made it my exclusive business; I first served as cook on my first voyage; I then served about three years before the mast, and about three years longer as second mate and mate of ships. Since that time, say eleven or twelve years, I have commanded ships, all owned and belonging to Bath and vicinity.

3. I doubt not I have been as many as twenty voyages to New Or-

leans within fifteen years. My last voyage there was a year ago last May. I have endeavored to inform myself as to the river Mississippi, and its bars, and the southwest pass. I have always had a pilot over the bar, or else been towed by a steamer. I think I could navigate a ship myself through the southwest pass to New Orleans; the other passes are filling up, and not used, I think, by ships, as pilots have informed me.

4. There are many currents and tides setting in different directions, and cross currents and under currents, about the bars of the Mississippi at its mouth. I think they add considerably to the difficulty of navigating, and affect the ease with which vessels, within their influence, can be steered. They often cause vessels to take a sheer and become ungovernable; the current on the top being often different from the bottom. On account of counter currents I have often been obliged to anchor outside the bar.

5. If I have not a commanding breeze I do not attempt to go to sea. I should sail with a six knot breeze if I could go near our course. I do not know how I could avoid the difficulties before mentioned, as they cannot be foreseen, and they happen to the best pilots.

6. With a good breeze, say six knots or more, I should be as likely to go through under topsails and jib as under full sail; and vessels, towed by a steamer are not generally allowed full sail on account of their sheering. After the steamboat leaves them, they begin to put on sail, if required. My own practice and observation of others make me conclude that vessels, towed by steamers, carry light sail generally.

7. There are always found many hammocks or nubbles on and about the bar of the Mississippi, making navigation difficult. A ship sailing on the wind, with her larboard tacks on board, and striking any such hammock or nubble on her larboard quarter, the tendency would be to throw her upon the wind, unless counteracted by currents.

8. (Question objected to.) I never saw a collision, nor met with one on or about the bar. I have often heard of such, when at New Orleans, as matter of report. On account of the controlling influence of the currents, the masters or pilots are seldom blamed. I consider that prudence and skill are more liable not to be successful than in any other river or bar I have known in the United States.

9. I have heard the annexed depositions read by the commissioner, and have carefully examined them, and answer the questions relative thereto in their order, as follows, viz:

1. I do not conceive there was any apparent danger of collision of the Clarissa and Concord before the Clarissa was thrown into the wind.

2. I should consider it as dangerous for the Clarissa to come to anchor as to continue on; she would be in danger of shoving the anchor through her bottom. Further, I think the anchor would not have held her.

3. Were I in the place of the master of the barque I should have put the helm up as he did to have kept her off, and not have attempted

to have gone to the windward, and I do not think it was unskilful management.

4. I should think there was not time sufficient for the Clarissa to have braced her yards aback after she luffed, unless we suppose the hands all at their stations expecting such an operation. It would have been better seamanship in my opinion to have braced the yards aback if there had been time.

5. (Question objected to.) I do not perceive from the testimony any act of the master or mariners of the Clarissa indicating a want of due skill or diligent prudence.

6. (Objected to.) I have never known or seen regulations as to anchoring on or about the bar and mouth of the Mississippi. I cannot say that there are none such. In ports and crowded channel ways such regulations constantly exist.

7. (Objected to.) I think it a great danger and impediment to navigation, and a cause of accidents for ships and other vessels to anchor in the usual channel ways leading between great ports and the ocean.

8. (Objected to.) I deem a vessel aground in a channel over a bar as creating as much of an impediment to free and safe navigation as if she had anchored in the same position; I think the chances of collision would be increased, because she might *she might* sheer with her helm.

9. (Objected to.) The ship Concord bedded in the mud, with her sails all trimmed and drawing, was an obstruction to navigation at that point; I think the collision would not have been so certain if the Concord had been afloat, at anchor, or going ahead.

The answers of Captain Isaac Merritt, under oath, to the cross interrogatories put on the part of the libellants, are as follows, in the order proposed, viz:

1. I am not interested in the result of this suit, neither to my knowledge am I connected with any or either of the parties. I do not even know who they are.

2. A vessel under her topsails and jib, with 7 or 8 knot, fair wind, is generally manageable.

3. I have never seen any collisions there, and refer to my answer to the 8th direct interrogatory.

4. A vessel coming up with another, stationary or sailing very slowly, is bound to keep a look-out so as to steer clear of the ship ahead if possible.

5. I think the Concord, heading out with her sails all set, and filled with so strong a breeze, might have misled the Clarissa; I do not know enough of the other circumstances to suggest any other explanation.

6. I do not think it follows, necessarily, from the testimony, that there was not a good look-out on board the Clarissa.

7. I think the course of the Clarissa, before she swung to the windward, would have carried her clear of the Concord; after she luffed I think she would not have gone clear if she had not fallen off, because she was on the bottom and would not mind her helm.

8. If there had been sufficient water to keep the Clarissa clear of her anchor, I think she might have anchored when as near as thirty rods.

9. I refer to the answers of the captain and second mate of the Clarissa respectively, to the 17th cross interrogatory, in their depositions.

10. If it had been known in time that the Concord was aground by the barque, I think the collision might have been avoided.

11. If the man at the helm of the Clarissa did not hear or obey the direction of the pilot to steer two points to the leeward of the Concord, it might or might not account for the collision, according to the degree and direction of the deviation.

12. I suppose the Clarissa to have been on the south side of the bar in the river when the collision happened; the channel there is not more than fifty yards wide in some places; I do not think the Concord was in fault; neither do I think the Clarissa had any idea of running into her.

ISAAC MERRITT.

U. S. A., *district of Maine, ss.*

On this fourteenth day of September, in the year of our Lord one thousand eight hundred and fifty, personally appeared before me one of the persons authorized by the foregoing commission to take his answers to certain interrogatories thereto attached, Isaac Merritt, of Bath, in the district of Maine, and was carefully examined under oath, to testify the truth, the whole truth, and nothing but the truth, touching the matters contained in the said interrogatories; and when I took the examination as aforesaid, putting the several interrogatories and cross interrogatories in their order, and taking the answer of the deponent to each fully and clearly, the answers were, severally, as they were made, reduced to writing by myself, in his presence, and afterwards all being carefully read over to him by myself, were subscribed and sworn to by him before me, as and for his deposition.

The above deposition was taken in a place separate and apart, and no person was permitted to be present during the examination, except the deponent and myself, or in any wise to communicate with him whilst giving his testimony.

EBEN. EVERETT, *Com'r.*

Costs—Deposition - - - - -	$3 00	
Commissioner's travel, Brunswick to Bath -	1 00	
		4 00
Deponent - - - - - -		1 08
		$5 08

UNITED STATES OF AMERICA.

[SEAL.] The circuit court of the United States, within and for the Massachusetts district.

MASSACHUSETTS DISTRICT, *ss.*

To Edmund G. Loring, esq., commissioner, circuit court of the U. S., district of Massachusetts.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed, of Thomas A. Melcher, to the interrogatories originally propounded to him by respondents, a witness to be examined on behalf of the respondents, and to be used in a certain cause now pending in said court, wherein Benjamin T. Reed, libellant, versus William M. Peck et als., respondents. And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, whilst present before you, to examine carefully, on oath, touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, holden at Boston, as soon as the same shall have been executed.

In testimony whereof we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this twenty-first day of May, in the year of our Lord one thousand eight hundred and fifty.

ISAAC O. BARNES, *Clerk.*

N. B. You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent, whilst giving deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person, (if any,) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross interrogatories to the deponent in their order, and take the answer of the deponent to each fully and clearly.

Interrogatories to be exhibited to Thomas A. Melcher, of Brunswick, in the district of Maine, on behalf of the respondents, in the libel Reed vs. Peck et al.

1. Were you on board the barque Clarissa on or about the fourteenth day of January, 1844, and if so, in what capacity?
2. What was the condition of said barque when she sailed from the port of New Orleans?
3. What day of the week and month did she get under weigh and proceed down the river?
4. Did she remain at anchor in the river, and if so, how long and for what cause?
5. On what day did she further proceed down the river?
6. With or without the aid of a steam tow-boat?
7. State what was the state of the weather [and] of the wind on said latter day.
8. At what o'clock did the steam tow-boat come alongside?
9. Was there or not a pilot on board the barque.
10. At what time did the steam tow-boat cast off from the barque?
11. At what time did the pilot leave?
12. At that time what vessels were in sight?
13. Describe their position, distance, and appearance.
14. What orders did the pilot give on leaving; were those orders obeyed?
15. Describe particularly the course of the barque after the pilot left.
16. After the steamer cast off, did the Clarissa obey her helm as usual, and if not, for what cause?
17. State all the circumstances within your knowledge of the collision of the Clarissa and the Concord.
18. How long after the steam tow-boat cast off before the collision?
19. How long after the pilot left?
20. When did you first observe that the Concord was aground, and if before the collision, state how long.
21. What efforts were made to avoid the collision, and why were they not successful?
22. After the danger of the collision was seen, could it have been avoided?
23. State what you know of currents and under currents in that part of the river.
24. State what was done on board the Clarissa immediately after the collision.
25. State particularly and fully what injury the Clarissa received.
26. State all you know relative to repairs of the Clarissa in consequence of the collision.
27. State particularly what was paid for the repairs of the Clarissa, and what was the loss by her detention, and the loss sustained by the owners in consequence of the collision.

28. State any other circumstances within your knowledge for the benefit of the defendants in this suit.

RANTOUL, WOODBURY & UPHAM,
Proctors.

Cross interrogatories.

1. What *are* your age, place of residence, and occupation? If you were on board of the Clarissa at the time inquired of in the first interrogatory, please to state in what capacity.

2. Were you then, or are you now, an owner or a part owner of said vessel; if yea, of how large a part?

3. Were you then directly or indirectly interested in said vessel, or in her earnings or losses? If yea, please to state the nature and amount of such interest.

4. Are you directly or indirectly interested in the result of this suit; will it be of any consequence to you whether the owners of said barque prevail or are defeated therein?

5. What was the tonnage of said barque; what was her best sailing trim; and how many feet of water did she, when in good trim, draw forward and aft?

6. Was she a good sailing vessel, easily managed, obedient to her helm, or otherwise?

7. When she sailed from New Orleans in January, 1844, what cargo had she on board; of what did it consist; was she fully and deeply laden or otherwise; how many feet did she draw forward and aft?

8. At that time how many persons were on board thereof? Please give their names and places of residence, and where they are to be found now; also, to specify which were officers before the mast, passengers, &c.

9. Do you recollect distinctly and of yourself the circumstances attending said vessel's coming in collision with the ship Concord; have you had any conversation with any person or persons relative to the same, or received any information about it; if yea, with or from whom, and how lately?

10. Have you received any letters from any person or persons about such collision and the circumstances thereof, or respecting the testimony to be given by you in this suit. If yea, please to annex the same, if you cannot give the reasons why, and state from whom they were received, and the substance of the same.

11. How far were you from the Concord when she was first seen from the Clarissa, and in what direction; under what sail was each vessel at that time; which way was the wind; was it blowing fresh?

12. How far from the Concord was the Clarissa when the tow-boat and pilot left the latter, and in what direction; under what sail was the Clarissa then?

13. If the Clarissa had kept on the same course in which she was

when the pilot left, would she have struck the *the* Concord; how much was her course altered, and by whose orders, and for what purpose?

14. If you have said that the Clarissa did not mind her helm as well as usual, please to state how long this fact was discovered before she struck the Concord?

15. If you have said that she did not mind her helm as well as usual, and have undertaken to assign a cause for it, please to state whether you are certain that such was really the cause, or do you only suppose it to have been so?

16. If you have assigned a cause, please to state all the facts, circumstances, and reasons which lead you to believe that such was the true cause; when did it first occur, or was first suggested to you?

17. If the fact that the Concord was aground had been earlier known or discovered, could not the collision have been avoided? If you say it could not, please to state all the reasons which induce you to think so?

18. How far from the Concord was the Clarissa when it was discovered that the Concord was aground; by whom was it first observed, and what was first done?

19. Was not the Clarissa then sailing under the influence of a favorable wind and tide, and with considerable speed? Please to state at what rate she was sailing; was she a slow or fast vessel?

20. If you have said that the Clarissa fell off after the pilot left her, please to what cause this is to be attributed; was it not owing to some fault or negligence on the part of the person at the helm; might it not have been prevented or avoided?

21. When the pilot left the Clarissa, in what direction and how far off was the Concord; if the Clarissa had kept her course, would she have gone to windward or leeward of the Concord, or right on to her?

22. If the Clarissa soon afterwards swung round so as to point to windward of the Concord, please to state what was then done on board the Clarissa?

23. If the wheels of the Clarissa had then been put down, or if it had been kept amidships, whether or not would she have struck the Concord; would she have not gone to windward of her? If you say no, please to give the reasons of your opinion.

24. If you know any other matter or thing which may benefit the libellants in this suit, please state the same as fully as if thereto specially interrogated.

F. C. LORING, *Proctor.*

A true copy. Attest: E. BROWN, Jr., *Clerk.*

I, Thomas A. Melcher, of Brunswick, in the State of Maine, master mariner, on oath depose and say, in answer to interrogatories to him addressed, and annexed to the commission hereto prefixed:

1. I was on board the barque at that time as mate.

2. She was in good condition to go to sea.

3. The day of the month or week I don't now recollect in which she proceeded down the river.

4. She came to anchor in the evening because they couldn't go over the bar in the night.

5. The next morning, between 8 and 10 o'clock, we weighed anchor, and proceeded down the river, in tow of a steamer made fast alongside.

6. With a steamboat, as stated.

7. The weather was clear and the wind northwest, blowing a strong breeze.

8. Between the hours of eight and ten; I can't state more precisely.

9. There was.

10. The steamer cast off the barque in about half an hour after she made fast.

11. The pilot left when the steamboat did, and in her.

12. The only vessel I recollect as being in sight was the Concord, ahead under full sail.

13. She bore about south, and appeared to have the wind on her starboard quarter, and all sail set; and I should think less than one eighth of a mile off.

14. I heard the pilot on leaving give orders to go to leeward of the ship; we were then heading for her.

15. After that the barque fell off; the foretopsail was loosed and the larboard sheet hauled home, and the barque was going the course ordered by the pilot, and before the starboard sheet was hauled home we swung to, and continued on our course about two minutes after the pilot left us; I heard the captain say, put the wheel hard starboard as he walked aft; the barque didn't mind the helm, and we swung to, and were immediately into the ship.

16. She did not obey her helm as usual, and must have been dragging on the bottom.

17. The barque lost her jibboom, bowsprit, and cutwater, and hung to the vessel not over two minutes, but swung round, and the current took her on her larboard quarter, and we drifted out, stern foremost, by the ship's starboard side; we struck the ship in the stern in the middle of the taffrail, and carried away her boat, taffrail, and round-house aft, and cut right into her to within four feet of the water.

18. Less than five minutes.

19. The same time.

20. I observed it when the barque first sung to, about two minutes after the pilot left us, and about the same time before the collision.

21. The helm was ordered hard starboard, and the foretopsail set, and if she would have minded her helm she would have gone clear, and she did not mind her helm because she dragged in the mud.

22. It could not.

23. There was the general current of the river, and I think it was then running five miles an hour, and it is supposed there is always an under current there which causes the bar to make. I know of no more.

24. Tackles were put on to the head stays; the anchors were cleared the first thing, and after drifting sufficiently clear of the ship the anchor was let go.

25. We carried away jibboom, bowsprit, cutwater, head-rail, started the top-gallant forecastle deck, shoved the pall bits aft, and started some of the wood ends and horse pipes, and cut all the rigging forward attached to the jibboom and bowsprit, and we were obliged to cut every thing attached to the anchor to let it go.

26. The Clarissa was repaired in the points stated above as injured, and her cargo was discharged for the purpose; she went into a dry dock, and was caulked outside, and a new breast hook put in to strengthen her bow.

27. I have no personal knowledge by which I can answer this interrogatory.

28. I know nothing more.

1. I am thirty-one years of *of* age; my residence Brunswick, (Maine,) and I am a shipmaster; I was on board the Clarissa as mate.

2. I was not an owner.

3. I had no interest in her or her earnings.

4. No, sir.

5. Her tonnage was about 245 tons; her best sailing trim was six inches by the stern; when loaded with a heavy cargo, twelve and a half feet aft and twelve feet forward.

6. She was a good though not a fast sailer, and steered well.

7. Our cargo was of provisions; beef, pork, and lard; we were fully loaded with a deck load; she drew twelve and a half feet aft and twelve forward, to the best of my recollection.

8. The captain was Joseph Melcher; the second mate Daniel Dunham; we had six foremast hands, and I neither recollect their names nor [where they] reside, or are to be found. Captain Melcher is dead. Dunham resides in Bath or Brunswick, and is now, I presume, in one of those places.

9. The circumstances above stated I have stated from my own recollection; I have conversed with persons who have questioned me as to our accident; the parties interested and others, with Mr. Snow, about two days ago, and Mr. Hunt at the same time.

10. I received a letter from Stephen Snow requesting me to give my deposition, if I did not come home; this was in New Orleans, in February last, and that is the whole substance of the letter.

11. When I first saw the Concord she was less than one-eighth of a mile from us, bearing about south, and under full sail, and the wind northwest; the Clarissa had her foretopsail set, one sheet home, and the other about half way; it was blowing fresh.

12. When the tow-boat and pilot left us the Concord was less than a quarter of a mile off; we had our foretopsail as stated.

13. If the Clarissa had kept on she would have gone into the ship; her course was altered about two points by the pilot's orders, to clear the ship.

14. Not over two minutes.

15. It is my inference from what I saw.

16. I heard the order given to put the helm hard starboard, and I

saw the vessel didn't mind it as usual, and it first occurred to me then that she was dragging, as my own thought, and no one's suggestion.

17. If we had seen the ship when the steamboat left we could have avoided the collision; that is, if we had known she was aground, and we were so near the bottom.

18. It was less than one-eighth of a mile; the captain first saw it, and ordered the helm up, or hard starboard.

19. She had a strong wind and tide, and was going nine or ten miles an hour; she was a fair sailer.

20. She fell off because such were the pilot's orders to clear the ship; it was purposely done; she swung to because she would not mind her helm.

21. The Concord was less than one-quarter of a mile bearing south; if the Clarissa had held her course she would have gone right into her.

22. The Clarissa did not point to windward of the Concord; when she swung, the wheel was ordered hard starboard.

23. She would have struck the Concord.

24. Because we were too near then to avoid her.

25. I know nothing more.

T. A. MELCHER.

U. S. A., *First circuit, district of Massachusetts.*

This sixteenth day of July, in the year of our Lord eighteen hundred and fifty, personally appeared before me the above named deponent, and being sworn to speak the truth, the whole truth, and nothing but the truth, in relation to the cause for which his deposition was taken, was examined by me on the interrogatories to him addressed, annexed to the commission hereto prefixed, and his answers thereto written down by me in his presence, after being carefully read over to him by me, were by him subscribed in my presence as and for his deposition. Taken by authority of said commission for the cause or suit therein specified.

Com. fee, $6 00.

EDW. G. LORING, *Com.*

Protest.

UNITED STATES OF AMERICA,
State of Louisiana, city of New Orleans.

By this public instrument of protest be it known, that, on the nineteenth day of January, in the year of our Lord one thousand eight hundred and forty-four, and of the independence of the United States of America the sixty-eighth, before me, Greenbury Ridgely Stringer, a notary public in and for the parish of Orleans, dwelling in the city of New Orleans, State of Louisiana, duly commissioned and sworn, personally came and appeared Joseph Melcher, master of the bark called the Clarissa, of the burden of two hundred and twenty-four $\frac{46}{95}$ tons

or thereabouts, and noted in due form of law, with me, the aforesaid notary, his protest, for the uses and purposes hereafter mentioned; and now, at this day, to wit, the day of the date hereof, before me, the said notary, at the city of New Orleans aforesaid, again comes the said master, and requires me to extend his protest, and together with the said master also come Thomas A. Melcher, mate, James McFarlane and Peter Glasgow, seamen, belonging to the aforesaid vessel, all of whom being by me duly sworn on the holy evangelists of Almighty God, voluntarily, freely, and solemnly do declare and depose as follows, that is to say, that on the fourteenth day of January last past, he, the said master, set sail and departed in and with the said vessel, as master thereof, from New Orleans, having on board the said vessel a cargo of merchandise, and bound for the port of New York; that the said vessel was then stout, staunch, and strong; had her cargo well and sufficiently stowed and secured; was well masted, manned, tackled, victualled, apparelled, and appointed, and was in every respect fit for sea and the voyage she was about to undertake.

On the fourteenth instant got under weigh and proceeded down the river in tow of steamboat Invincible, and arrived near the entrance of the river on the sixteenth, when we anchored and remained until Wednesday, the following day, in consequence of bad weather.

On this latter day had strong breezes from the northwest, and clear weather; at ten o'clock the steamer again came alongside, (and having weighed anchor) proceeded to convey the vessel over the bar; at 11 30, a. m., the steamer and pilot left us, as was supposed, all clear of the bar, first giving orders to steer two points to leeward of a ship, (since ascertained to be the Concord, who was just ahead of us, with all her sails set, and outward bound.) Agreeably to instructions, we headed along so one or two minutes, and then swung to a point to windward of the Concord; the wheel was immediately put hard up, and the foretopsail sheeted home; the Clarissa at this time had swung off, heading for the ship, and remained so, with her wheel hard astarboard, until she struck the said ship Concord.

After the collision, it was ascertained the Concord had grounded a short time before, which completely deceived the pilot and master of the Clarissa, who reckoned that the other vessel was still proceeding on, and (at that time) such appeared to be the case; not five minutes had elapsed from the time the pilot and towboat left us, before the barque fell off, and was found to be dragging in the mud, and would not mind her helm; and owing to the rapidity of the current, also, it was beyond the possibility of human efforts to avoid the disaster.

In striking the ship we carried away our jib-boom, bowsprit, head, cut-water, both cat-heads, ripped up her forecastle deck, started her wood ends, and other damages, causing her to leak very badly, compelling us to keep both pumps working to keep her free; and for general preservation it was deemed absolutely necessary to return to New Orleans for repairs, &c.

Accordingly, after having anchored, and secured the masts by put-

ting tackles on the head stays, we sounded the pumps again, and found her making considerable water.

Immediately set a signal for assistance, and shortly after the steamer Southerner came alongside, took us in tow, and returned with the vessel some distance up the river, (having at this time over two feet of water in her hold, and leaking very freely.)

Anchored and remained some time, when we again got under weigh, proceeded up the river, and arrived at the port of New Orleans on Friday morning following, and soon after called the surveyors of the port, and were recommended by them to have the vessel discharged and docked for examination and repair of injuries, &c., which the master, upon reflection found it necessary so to do for general benefit.

At this time the bark was leaking between six and seven hundred strokes per hour, and men employed constantly at one pump to keep her free; and the said master further says, that as all the damage and injury which already has, or may hereafter, appear to have happened or accrued to the said vessel or her said cargo, has been occasioned solely by the circumstances herein before stated, and cannot nor ought not to be attributed to any insufficiency of the said vessel, or default of him, this deponent, his officers, or crew. He now requires me, the said notary, to make his protest and this public act thereof, that the same may serve and be of full force and value, as of right shall appertain.

And thereupon the said master doth protest, and I the said notary, at his special interest and request, do by these presents publicly and solemnly protest, against winds, weather, seas, currents, collisions, &c., &c., and against all and every accident, matter, and thing, had and met with as aforesaid, whereby, or by means whereof, the said vessel, or her cargo, already has, or hereafter shall appear to have, suffered or sustained damage or injury; for all losses, costs, charges, expenses, damages, and injury, which the said vessel, the owner or owners of the said vessel, or the owners, freighters, or shippers of her said cargo, or any other person or persons interested or concerned in either, already have or may hereafter pay, sustain, incur, or be put unto, by or on account of the premises, or for which the insurer or insurers of the said vessel, or her cargo, is or are respectively liable to pay, or make contribution or average according to custom, or their respective contracts or obligations; and that no part of such losses and expenses already incurred, or hereafter to be incurred, do fall on him, the said master, his officers, or crew.

Thus done and protested at my office, in the city of New Orleans, this twenty-third day of January, in the year of our Lord one thousand eight hundred and forty-four, in the presence of A. C. Ainsworth and Gordon Plummer, both of this city, competent witnesses, who hereunto sign their names, together with the said appearers and me, said notary.

Original signed, JOSEPH MELCHER,
THOMAS A. MELCHER,
JAMES McFARLANE,

PETER GLASGOW,
A. C. AINSWORTH,
GORDON PLUMMER,
[SEAL.] G. R. STRINGER, *Not. Pub.*

I hereby certify the above and foregoing to be a true and correct copy of the original protest extant in my current register.

In faith whereof I grant these presents, under my signature and the impress of my seal of office, this twenty-third day of January, eighteen hundred and forty-four.

G. R. STRINGER, *Not. Pub.*

From the October term of this court, A. D. 1849, said cause was continued to the May term thereof, A. D. 1850, and thence was continued until this present term; and now, on this twenty-fifth day of March, A. D. 1851, after a full hearing of the cause upon the facts proved, and the arguments of counsel, and mature deliberation thereon had, the court doth order, adjudge, and decree, that the decree of the said district court be reversed; and that the said William M. Peck, and Jacob Badger, and Jeremiah Hunt, Jeremiah Hunt, junior, Benjamin Woodside, Benjamin Morse, Stephen Snow, Horatio Hall, and the said Joseph Melcher, recover of the said Benjamin T. Reed the costs of suit taxed at .

From which decree the said Benjamin T. Reed claims an appeal to the Supreme Court of the United States, as follows, viz:

Circuit court of the United States, for the first circuit and district of Massachusetts.

WM. M. PECK & als., resp'ts and app'ts,
vs.
B. T. REED, libellant.

The above named libellant conceiving himself aggrieved by the final sentence or decree, entered on the twenty-fifth day of March, in the year eighteen hundred and fifty-one, doth appeal therefrom to the Supreme Court of the United States, and he prays that his appeal may be allowed; and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the said Supreme Court.

C. G., F. C. & C. W. LORING,
Proctors.

Whereupon said appeal was allowed by the court.

UNITED STATES OF AMERICA,
Massachusetts district, ss.

I, Isaac O. Barnes, clerk of the circuit court of the United States, for the first circuit and district of Massachusetts, do hereby certify, that

Doff.

the foregoing is a true copy of the record of the case William M. Peck, et als., in admiralty, versus Benjamin T. Reed.

In testimony whereof I have hereunto set my hand, and affixed the seal of said circuit court, this twenty-sixth day of November, in the year of our Lord one thousand eight hundred and fifty-one, and in the seventy-sixth year of the independence of the United States of America.

[SEAL]

ISAAC O. BARNES, *Clerk.*